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Roman Law

BIBLIOTHECA CLASSICA.

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M. TULLII CICERONIS ORATIONES.

WITH A

COMMENTARY BY GEORGE LONG.

VOL. II.

LONDON:
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GEORGE BELL, FLEET STREET.
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PREFACE.

I HAVE little to say about this second volume of Cicero's orations. It would have appeared sooner, if my labours had not been often interrupted. But interruptions have not been the only cause of delay. The difficulties in some of these orations are so many and so great, that after all that has been done by many excellent commentators, there still remains a great deal to do. I have done the best that I could, but I have not always been able to satisfy myself; and though I have very freely remarked on the mistakes of others, I do not suppose that my own work is faultless. However, the reader will find here a great deal that he will find in no other edition; and he will learn that the study of Cicero's orations must be a severe labour to those who would make it profitable.

I have mentioned in the Introductions to the several orations the editions and books which I have used, in order to make a due acknowledgment to all those from whom I have got help, and to inform the reader where he may look himself, if he chooses.

I did not receive the volume of the new edition of Orelli's Cicero, which contains the Orations, until I had finished and printed the notes as far as the Oratio Pro M. Tullio[1].

GEORGE LONG.

BRIGHTON COLLEGE,
Sept. 1, 1855.

[1] See p. 136.

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INTRODUCTION.

This oration was delivered B.C. 81, when Cicero was a young man. It is the first of his extant orations, though not the first that he delivered (Pro Quintio, c. 1). It is also one of the most difficult; for the text is doubtful in some passages, where the difference between the true and the false reading affects the understanding of the whole oration; and the legal question which is before the Judex is not very easily apprehended. Those who would understand this oration must be content to take the necessary pains; and if they do not readily comprehend all that is said, they may impute it as much to themselves as to any other cause, if their presumption does not get the better of their modesty.

The best commentary on this oration is in the "Semestrium ad M. Tullium Ciceronem Libri Sex," by F. L. Keller, Zürich, 1842. Keller has printed at the end of his dissertations on this oration the various readings of thirteen Paris MSS., and a selection from a Bern MS. The text which he has selected for comparison with these various readings is Orelli's.

It is very difficult to explain the subject in dispute between S. Naevius and P. Quintius, for Cicero's statement and his arguments are both confused. Sex. Naevius and C. Quintius, the brother of Publius, were in partnership in Gallia; and when C. Quintius died, he left his brother his heres. The death of C. Quintius dissolved the partnership between him and Naevius; and the accounts ought then to have been settled between Naevius and P. Quintius, the heres of Caius (c. 3, 4). It is impossible to learn from Cicero what transactions there were between Naevius and P. Quintius after the death of Caius; but he affirms that nothing was due from P. Quintius to Naevius, either on a partnership account or on any other account (c. 11). But Naevius affirmed that there was something due to him, or at least he required the partnership accounts to be taken in order to ascertain whether there was any thing in dispute between him and P. Quintius (c. 5, "nisi prius de rebus rationibusque," &c.). After some delay, P. Quintius

asked Naevius to come to a settlement about their affairs, since he supposed that there was some matter in dispute between them. All attempts at a friendly settlement failed, as Cicero says; but at last Naevius declared (c. 6) that there was nothing due to him on the partnership account (c. 6: 'ait se auctionatum,' &c.); and that if Quintius had any demand against him, he was ready to answer it. They parted without requiring of each other the usual security for appearing in court on a given day. Naevius stayed at Rome; Quintius went into Gallia to look after his affairs. As soon as Naevius heard that Quintius had got as far as the Vada Volaterrana on his journey, he summoned his friends to the Tabula Sextia to bear witness that Quintius had not made his appearance there, and that he had; though, as Cicero says, Quintius was not bound to appear, nor Naevius either. Upon this failure of Quintius, or alleged failure, to appear, Naevius applied to the Praetor Burrienus to obtain execution, or, in the Roman phrase, to take possession of the property of his debtor; for this application to the Praetor implied a demand of Naevius against P. Quintius of some definite amount of money (c. 6). Naevius obtained the Praetor's order; and we must assume that he produced the necessary evidence to obtain it. He then put up notices (libelli) of the sale of the property of P. Quintius, which Alfenus, the procurator of P. Quintius, pulled down, and gave Naevius notice that he would stand in the place of Quintius and defend him. In the mean time, it is said by Cicero, P. Quintius was ejected from the pasture-grounds and common property which Naevius and Quintius had in Gallia: he was ejected by the slaves which they held in common. But we do not know what this common or partnership property was. It might be either the partnership property of C. Quintius and Naevius, which was still undivided, or it might be partnership property of P. Quintius and Naevius, who had formed a new partnership after the original partnership was dissolved by the death of C. Quintius. There is no statement that the two men had come to a settlement after the death of C. Quintius, and it seems that they continued to carry on the business as before with the old partnership property, and thus by their acts without any formal agreement they made a new partnership; for the acts of the parties could establish a partnership without any other evidence of consent, as people may do in England (Gaius, iii. § 135). And Cicero tells us in plain words (c. 29) that Naevius and P. Quintius, at the time when he was speaking, held as partnership property the 'saltus' or pasture-grounds from which P. Quintius was expelled. Now Cicero could not use the expression "per vim expulso socio," unless Naevius and P. Quintius were in partnership; for the death of C. Quintius had dissolved the old partnership.

Farther, he says that P. Quintius had some slaves of his own on the

'saltus' from which he was ejected, and that all these slaves were not ejected, though their master was. It is a thing past all understanding how Naevius, who was at Rome, contrived to eject P. Quintius out of the land by means of the slaves which were their partnership property, and why P. Quintius could not keep in, when some of his slaves did. P. Quintius appealed to the governor of the Gallia Provincia, C. Flaccus, who did something, as Cicero says, but he has not told us what it was that Flaccus did (c. 7).

Alfenus, in the mean time, was carrying on the war with Naevius at Rome; and as Alfenus had declared himself the representative (procurator) of P. Quintius, Naevius required him to give security for the satisfaction of the judgment, if it should be against P. Quintius. (See Gaius, iv. 84, "Procurator vero," &c.) Alfenus refused, because his principal, if he were present, would not be obliged to give this security; and Alfenus was probably wrong in law. For on appealing to the Court of the Tribuni (Cicero has forgot to tell us against what he appealed, for he has not yet mentioned the Praetor's order), he got time, and nothing else: he was required to promise to produce P. Quintius on the ides of September.

Accordingly P. Quintius came, and made his appearance; after which Naevius did nothing for eighteen months, as Cicero says, though Naevius was the claimant. At last Naevius comes before the Praetor Urbanus Cn. Dolabella, with P. Quintius, and requires P. Quintius to give him the security which he had asked of Alfenus. Of course he was going to bring an action of some kind against P. Quintius, or he would not have asked for security to be given for the satisfaction of the judgment, if it should be against P. Quintius. Cicero has not told us what the action was. It was either an action on the partnership account (pro socio), or it was a demand of some definite sum, Naevius claimed the security 'judicatum solvi,' because he affirmed that he had been in possession of the property of P. Quintius for thirty days, and pursuant to the edict. P. Quintius made no objection to the form of action, but he said that he was not bound to give the security, because his property had not been possessed in the way that Naevius alleged.

This question then was to be settled before the action could be commenced; and the cause is 'praejudicialis,' or one in which another thing must be determined before the main matter can be tried.

Accordingly the Praetor decided that there must be a Sponsio, the form of which is given by Cicero (c. 8, 27); and the understanding of this oration depends on the right reading in these two chapters. The form of the Sponsio is this: P. Quintius stipulates from Naevius that Naevius must pay him a certain sum of money, if the property of P. Quintius had not been in the possession of Naevius for thirty days,

pursuant to the order of the Praetor Burrienus. The action thus turned on the fact of possession or no possession; and P. Quintius, who affirmed that there was no possession, would bring his action for the sum of money mentioned in the Sponsio; and if he proved that his goods had not been possessed in the manner aforesaid, he would gain his cause.

Cicero complains of this order as being most unjust, a question with which the Judex had nothing at all to do. He had only to investigate the matter before him according to the Praetor's instructions. Cicero also complains that he had to speak first; that he had to prove his case. He had in fact to maintain a negative proposition, as he tells us (c. 10: 'nego fuisse caussam,' &c.). Now it is generally the easier and better way of settling a question to prove a fact than to disprove it. If the explanation of the Sponsio is right, P. Quintius must however prove his case, for in the Sponsio Naevius had promised to pay P. Quintius a certain sum of money if the property had not been possessed in the manner aforesaid; and if P. Quintius claimed the money, he must be the plaintiff, and he must prove his case. It is true that P. Quintius might not choose to claim the money, but then he must admit that his property had been possessed in manner aforesaid, and he must give the security 'judicatum solvi,' which he had refused, and refused on the ground that his property had not been possessed. But it may be said, Why did not the Praetor compel Naevius to prove that the property of P. Quintius had been possessed, and to make the same Sponsio which he compelled P. Quintius to make? The answer perhaps is, though we do not expect Cicero to furnish us with it directly, that the presumption was in favour of the possession, or in other words, the fact of possession was considered so clear that nothing but some informality or irregularity in the possession could disprove it. Cicero's defence shows this, or why should he try to prove that Naevius had no ground for asking the Praetor's permission to seize the property, in which he admits that he did ask the permission; and he also admits that he did try to get it? Why should he try to prove that Naevius 'ex edicto possidere non potuisse,' if there was no possession at all? Finally, his proof that Naevius 'non possedisse' admits the fact of partial possession, but denies that it was such a possession as was required. Cicero admits also (c. 6) that Naevius had seized a slave of P. Quintius, and that Alfenus took the slave away. The fact of possession in a manner is admitted by Cicero: and accordingly it was his client's business to prove that it was not the possession which entitled Naevius to a judgment in his favour in the Sponsio; and consequently did not entitle him to require of P. Quintius a security 'judicatum solvi' in the principal action.

Keller, who supposes that Cicero has got a bad case, which is very

probable, discusses at some length (p. 2, &c.) what the Praetor's decree was as to the Sponsio, what decree he had power to make, and what decree he ought to have made. He shows most clearly that if a man's property had been seized in due form, any person who had an action against him was entitled to demand the security which Naevius demanded (Pro P. Quintio, c. 8; Gaius, iv. § 102; Ulpian, Dig. 42. 5. 33. § 1); and this is the reason why the Sponsio here is expressed generally, and Naevius' name is not mentioned.

He also supposes that the Praetor could either have determined the question of possession or no possession himself, and that his decision would have been against Quintius, which is all immaterial to our present inquiry; or that he could establish a 'praejudicium,' or preliminary inquiry about the fact, and remit the parties to a Judex, which he did. But in order to give the Judex cognizance of a case, it was necessary that it should be reducible to some form of action. Now the question whether a man's property had been duly seized or not was not the subject of any action; there was no formula or form of action in which this question could be tried. The Romans sometimes got over difficulties of this kind by fictions: in this case by another contrivance. It was a Roman principle that if a man had ever promised payment of a definite sum of money by replying 'spondeo' to the question 'spondes?' of the stipulator, the stipulator had a right of action against him on this simple promise. All that was necessary then was for the Praetor to require the parties to go through this form, and then the Judex could try the question on the Sponsio. The Sponsio was conditional: the result of this trial depended on the fact of possession. The fact of the Sponsio was certain. The fact of the possession or no possession was to be proved; and according to the evidence the Judex would give judgment for the plaintiff or the defendant directly on the sum of money, indirectly on the fact of possession or no possession. This was not a case for a mutual Sponsio, and for a restipulatio (Vol. i. p. 172), because the object was not to make either one or the other party pay a sum of money (Sponsio poenalis), but simply to decide another fact. If P. Quintius proved his case, Naevius paid him nothing, but he had no claim to the security 'judicatum solvi,' which he had required of Quintius (Gaius, iv. § 93, 94). There is no doubt that in this kind of Sponsio the sum of money in the Sponsio was due to the stipulator, if judgment was in his favour; but the sum was merely nominal, and probably was never paid or demanded. The question of the 'Sponsiones poenales' is also discussed by Keller; but it does not concern the present matter. The question is also somewhat obscure; and it is doubtful if we understand it fully.

Keller supposes that in the case of the 'Sponsio praejudicialis' the

Praetor might at his pleasure determine which of the two parties should be the stipulator, and consequently which must be the plaintiff in the action on the Sponsio, and must prove his case. This may be so, for the Praetor could impose on the parties his own terms, if they could not agree on the mode of procedure. He must however have been guided in his judgment by such facts as he knew; and Keller, who contends that the Praetor did right in referring to a Judex the decision of a question which, as far as Cicero's speech shows, was a very perplexed question, also admits that the facts as they appear seem to be in favour of Naevius having had possession; and I have shown that there is no doubt of that, for Cicero says so, but he disputes the complete possession. It is generally said or supposed by modern writers that the plaintiff in the principal action was also the stipulator, and consequently the plaintiff in the Sponsio; and Keller admits that this was so, whenever the principal action was comprehended within and decided by the 'actio praejudicialis.' He does not give an instance of such a case. His conclusion is this, as to the 'actio praejudicialis,' the matter of the present inquiry: "that when a praejudicium was necessary on account of some secondary and incidental question, it was just to consider on which of the two the burden of the proof lay, and which of the two had the presumption in his favour, or (as here) a show of possession; and accordingly to require him on whom the burden of the proof lay, to become the stipulator and the plaintiff, and to allow him who had the presumption or the show of possession in his favour, to be the promissor and the defendant." This is a just statement of the case; and the decision of the Praetor is justified by what Cicero admits. Naevius had possession of part of the property, and Cicero tries to show that it was not such a possession as the edict and the law required, and therefore his client was properly the plaintiff in the Sponsio.

The nature of the question before the Judex being explained, it only remains to show briefly what Cicero attempted to prove (Keller, p. 171, &c.). The whole matter is contained in the following words (c. 10): "Negamus te bona P. Quintii, Sex. Naevi, possedisse ex edicto praetoris. In eo Sponsio facta est." Cicero divides this defence into three parts (c. 10): "Nego fuisse caussam cur postularet (Sex. Naevius): nego ex edicto possidere potuisse; nego possedisse." The two first divisions seem to be a matter of law. The third touches the fact of possession. As Keller understands it, if Quintius could prove any one of these three things, he would gain his cause.

In the first division Cicero employs eight chapters (c. 11—18) to show that Naevius had no legal ground for asking permission to seize the property of Quintius; and he attempts to prove this by showing that Quintius was not indebted to Naevius, either on a partnership

account, or on any other account (c. 11—14); and secondly by showing that Quintius had not failed in making any appearance which he was bound to make (c. 15—18). Keller has answered Cicero's arguments in support of these two positions, in which I do not think it necessary to follow him. I do not dissent from all that he says, nor from much of it. The weakness of Cicero's argument is proper matter for the student to exercise himself on.

The second division (c. 19—27) contains the arguments which show that Naevius could not have seized the property of Quintius 'ex edicto.' This part of the defence is subdivided into five parts. In the first part (c. 19—22), the cases are considered in which a man's property may be seized by his creditors; and the case of Quintius is not any of these. In the second part it is urged (c. 23, 24) that if the goods had been seized, the rest of the creditors of Quintius would have put in their claims, and the goods would have been sold. As this was not done, Cicero concludes that Naevius had not possession 'ex edicto;' manifestly an illogical conclusion. In the third he affirms that when the dictator L. Sulla was selling some property of the proscribed Alfenus, Naevius was a purchaser, and said that the purchase was on the joint account of P. Quintius and himself; whence he concludes that the goods of Quintius were not seized, for Naevius would not have made a joint purchase with a man who was in the ignominious condition of a debtor with his goods seized. This is very feeble: the facts are imperfectly stated, and it is impossible to accept the argument as worth any thing, with such knowledge of the facts as we have. In the fourth, Cicero attempts to show that Naevius sent men to Gallia to take possession before he got the Praetor's permission; and he proves this by the time. And in the fifth place, Naevius did not take possession 'ex edicto,' even if the fact of possession is admitted, because he turned Quintius out of the land in Gallia by force (c. 27).

Keller examines all these heads of argument. He does not admit that Cicero's argument is worth any thing, even if we suppose it to be true that Naevius sent men into Gallia to seize the land before he got the Praetor's order. He thinks this seizure, which might be a prudent measure, justified by an order obtained afterwards. I don't suppose that any body will agree with him here; nor when he says on the fifth head, that if Naevius took possession of the property in Gallia in a manner contrary to the order of the Praetor, he still had possession 'ex edicto.' Klotz, he says, is of the same mind with himself. Something more is said of this in the notes.

The third division contained the proofs and arguments that Naevius had not in fact seized the property of P. Quintius; but unfortunately all this division which came between c. 27 and c. 28 is lost, and we can only conjecture what was its purport from the peroration (c. 29, &c.).

Keller, in his essay, besides the division entitled 'Defensio in partes locosque digesta' (c. 9), of which I have just given a summary, has discussed the following heads at some length:—

§ 1. Quae fuerit judicii origo et natura.

§ 2. Quo jure Naevius ut bona Quinctii possideret a Praetore cum postulaverit tum impetraverit.

§ 3. Generalia quaedam de jure bonorum a creditoribus cum possidendorum tum vendendorum.

§ 4, 5, 6. Subsecivae quaestiones.

§ 7, 8. Alfenus Quinctium absentem recte defenderit necne.

These heads will show what kind of matter is contained in this oration. My plan required me to place in notes most of what Keller has put in the form of dissertation; but I have omitted very little that he has discussed; and though I do not always agree with him, he is the first person who has set the matter of this oration in a clear light.

The difficulty of the subject, the misunderstanding and the blunders of the commentators, are a sufficient apology for the length of this introduction and the notes. If this oration of Cicero is well understood, it will help a student towards understanding others. He will see how necessary it is to get a clear view of the matter, and not allow himself to think that under this simple, easy language there lies no difficulty. He will also learn to read the speech of an advocate with a proper distrust, and to know that Cicero's facts are not always true, and that his arguments are often directed solely to get a judgment in his favour.

There is a remark by a great scholar on the reading of Demosthenes, which is worth quoting here; for it is very appropriate: "Nocent autem aetati rerum imperitae ii scriptores maxime, qui obviis verbis, facilique ac dilucida oratione complectuntur res ejusmodi, quibus capiendis multa antiquitatis doctrina opus est. Talis oratio quum saepe etiam doctum deludat, fit plerumque illud, quo nihil nocentius esse potest, ut qui immature legunt, multum legendo nihil plene et accurate intelligere discant—Nam constat hos qui in Academiam delati nihil nisi magna et nobilia nomina scriptorum loquuntur, quos cognosse sibi, si diis placet, in scholis contigerit, eosdem fere reperiri inscientissimos, et in primis doctrinarum elementis rudes—Atque adeo quis fortasse non male judicet, qui hoc totum genus lectionis dicat ad virilem aetatem rectius reservari." (F. A. Wolf. Demosthenis Oratio adversus Leptinem, Epistola ad Reiz, p. x.)

M. TULLII CICERONIS

PRO

P. QUINTIO ORATIO.

I. QUAE res in civitate duae plurimum possunt, hae contra nos ambae faciunt in hoc tempore, summa gratia et eloquentia; quarum alteram, C. Aquilli, vereor, alteram metuo. Eloquentia Q. Hortensii ne me in dicendo impediat, nonnihil commoveor: gratia Sex. Naevii ne P. Quintio noceat, id vero non mediocriter pertimesco. Neque hoc tanto opere querendum videretur, haec summa in illis esse, si in nobis essent saltem mediocria. Verum ita se res habet ut ego, qui neque usu satis et ingenio parum possum, cum patrono disertissimo comparer; P. Quintius, cui tenues opes, nullae facultates, exiguae amicorum copiae sunt, cum adversario gratiosissimo contendat. Illud quoque nobis accedit incommodum, quod M. Junius, qui hanc caussam, Aquilli, aliquoties apud te egit, homo et

1. *C. Aquilli,*] C. Aquillius Gallus was a colleague of Cicero in the praetorship in B.C. 66. He was a lawyer or jurisconsultus, and a pupil of Q. Mucius Scaevola, Pontifex Maximus. He attained great distinction as a jurisconsultus, and the well-deserved reputation of an honest man, and an enemy to chicanery. Gallus was one of the instructors of Servius Sulpicius. He acted as Judex in the case of Quintius (B.C. 81); and also in the matter which is the subject of Cicero's oration Pro Caecina. Cicero always speaks highly of his talents and integrity. In his Officia (iii. 14) he speaks of him as having published the formulae de Dolo Malo; and in another passage (De Nat. Deorum, iii. 30) as having published (protulit) or introduced the Judicium de Dolo Malo. It is not quite certain if Cicero alludes to something that he effected by his Edictum as Praetor; but that seems the most probable meaning. Gallus is often cited by the Jurists out of whose writings the Digest was compiled.

vereor,—metuo.] It is usual for critics to fix the difference of meaning of such words as these; but in many cases it is hard to do, and students must try to find it out by comparing passages. This may help: Cicero (De Sen. c. 11) says of Appius Claudius the Censor: "metuebant servi, verebantur liberi." Both slaves and children feared him, but in different ways. 'Vereri' and 'metuere' are two words which Cicero gives as instances for an inquiry into sameness and difference. (De Or. iii. 29.)

comparer;] This means 'matched with,' as one gladiator with another. Thus 'paria' is used to signify pairs or matches of gladiators. See Horace, Sat. i. 7, 20. Cicero was now in his twenty-sixth year; and Hortensius, who was eight years older, had attained great reputation as an orator.

M. Junius,] It is not certain who this

in aliis caussis exercitatus et in hac multum et saepe versatus hoc tempore abest, nova legatione impeditus; et ad me ventum est, qui, ut summa haberem cetera, temporis quidem certe vix satis habui ut rem tantam tot controversiis implicatam possem cognoscere. Ita quod mihi consuevit in ceteris caussis esse adjumento, id quoque in hac caussa deficit. Nam quo minus ingenio possum, subsidio mihi diligentiam comparavi; quae quanta sit, nisi tempus et spatium datum sit, intelligi non potest. Quae quo plura sunt, C. Aquilli, eo te et hos, qui tibi in consilio adsunt, meliori mente nostra verba audire oportebit, ut multis incommodis veritas debilitata tandem aequitate talium virorum recreetur. Quod si tu judex nullo praesidio fuisse videbere contra vim et gratiam solitudini atque inopiae; si apud hoc consilium ex opibus, non ex veritate caussa pendetur, profecto nihil est jam sanctum atque sincerum in civitate; nihil quod humilitatem cujusquam gravitas et virtus judicis consoletur. Certe aut apud te et eos qui tibi adsunt veritas valebit, aut ex hoc loco repulsa vi et gratia locum ubi consistat reperire non poterit. II. Non eo dico, C. Aquilli, quo mihi veniat in dubium tua fides et constantia, aut quo non in his, quos tibi advocasti, viris electissimis civitatis, spem summam habere P. Quintius debeat. Quid ergo est? Primum magnitudo periculi summo timore hominem afficit, quod uno judicio de fortunis

Junius is. Passeratius supposes him to be M. Junius mentioned by Cicero. (De Leg. iii. 20.)

It appears that the case had been already heard in part and had been adjourned. More than one patronus was employed, as we see; but it is not certain whether Cicero defended Quintius because Junius was absent, or whether he would have spoken if Junius had been present. Cicero elsewhere (c. 10) alludes to the case having been stated by Junius.

Junius was absent on some 'legatio,' but there were many kinds of 'legatio,' and we do not know what this was. Some suppose that 'nova' means a new 'legatio,' as opposed to a former 'legatio;' and this may be the meaning. Or it may mean a sudden or unexpected 'legatio.'

Quae quo plura] 'Quae' refers to all the difficulties that Cicero has mentioned, all that he had to contend against.

in consilio adsunt,] The persons 'qui in consilio aderant' were L. Lucilius, P. Quintilius, and M. Marcellus (c. 17). They are mentioned (c. 2) as invited by Gallus to give him their assistance 'quos tibi advocasti;' and they were accordingly 'advocati.' Thus we obtain from the simple sense of the verb 'advocare' the meaning of the 'advocatus' of Cicero's time. Here they are the men who sit with the Judex, whom he invites to help him. In other cases they are invited to assist a defendant or plaintiff with their advice; and are distinguished from the 'patronus.'

atque sincerum] Three Paris MSS. have 'neque sincerum;' and it may be right. Klotz has 'neque sincerum.'—'nihil quod . . gravitas.' Here is a double nominative to 'consoletur,' for 'quod' is a nominative, and it is explained by 'gravitas et virtus.'—'locum ubi res consistat:' Klotz. Eight of Keller's MSS. have 'res;' and many MSS., as Orelli says. Klotz asks, who could have put 'res' into all the MSS.? but we know that it is not in all the MSS. Any body may add it if he pleases; and no harm will be done.

2. *Quid ergo est?*] A usual formula, as in c. 3, 18, 23; and in Horace, Ars Poet. v. 353. It means, "Well what it is then that I mean?" "What would I say?"

omnibus decernit; idque dum cogitat, non minus saepe ei venit in mentem potestatis quam aequitatis tuae; propterea quod omnes, quorum in alterius manu vita posita est, saepius illud cogitant, quid possit is cujus in ditione ac potestate sunt quam quid debeat facere. Deinde habet adversarium P. Quintius verbo Sex. Naevium, re vera hujusce aetatis homines disertissimos, fortissimos, ornatissimos nostrae civitatis; qui communi studio, summis opibus Sex. Naevium defendunt: si id est defendere, cupiditati alterius obtemperare, quo is facilius quem velit iniquo judicio opprimere possit. Nam quid hoc iniquius aut indignius, C. Aquilli, dici aut commemorari potest quam me, qui caput alterius, famam fortunasque defendam, priore loco caussam dicere? quum praesertim Q. Hortensius, qui hoc judicio partes accusatoris obtinet, contra me sit dicturus; cui summam copiam facultatemque dicendi natura largita est. Ita fit ut ego, qui tela depellere et vulneribus mederi debeam, tum id facere cogar, quum etiam telum adversarius nullum jecerit; illis autem id tempus impugnandi detur, quum et vitandi illorum impetus potestas adempta nobis erit, et si qua in re, id quod parati sunt facere, falsum crimen quasi venenatum aliquod telum jecerint, medicinae faciendae locus non erit. Id accidit praetoris iniquitate et injuria: primum quod contra omnium consuetudinem judicium prius de probro quam de re maluit fieri;

venit in mentem potestatis] See Vol. I. Divin. c. 13.

priore loco] He makes the same complaint again (c. 22, 31): but if the question has been truly stated in the Argument, and in the subsequent notes, he complains without reason. Cicero's client must speak first, for he had to prove his case.

The word 'caput' means no more here than a man's good name and character. 'Vita' is an oratorical exaggeration.

When Cicero says that Hortensius 'partes accusatoris obtinet,' 'fills the office of an accuser,' he uses an expression which will mislead readers, if they take Cicero to be speaking the plain truth. In the first place 'accusator' is the prosecutor in 'publicae causae,' as the Romans term them. Cicero was an 'accusator' of Verres. Secondly, in this case before Aquillius, Hortensius defended Naevius. All then that Cicero means is that the result of this trial, if against his client, would be a bad affair for him; and that Hortensius, his opponent, would do all that he could for his own client, and against Quintius. We may form a juster opinion of the true value of such a passage as this by observing that he next charges the patroni of Naevius with being ready to make a 'falsum crimen,' which he would not be able to answer, because he would not have the power of replying.

Id accidit] This is discussed in the Argument, and in the subsequent notes. It may be asked, what is the use of Cicero complaining of the Praetor's injustice, when it was the business of the Judex to follow the Praetor's instructions (formula), and he could not alter what Cicero complained of? If men are wronged, they like to complain, and they will complain to any body. If Cicero really thought that his client had not been fairly treated by the Praetor, he would insist on this before the Judex in the hope of turning it to advantage in this trial. If he merely said this, and knew that it was false, we must still suppose that he thought that his client would gain something by his lie. If the conduct of the Praetor was so clearly right as Keller supposes, and as it may have been, there is no excuse for Cicero. He could do his client no good by making a complaint that was quite groundless.

deinde quod ita constituit id ipsum judicium ut reus, antequam verbum accusatoris audisset, caussam dicere cogeretur; quod eorum gratia et potentia factum est, qui, quasi sua res aut honos agatur, ita diligenter Sex. Naevii studio et cupiditati morem gerunt; et in ejusmodi rebus opes suas experiuntur, in quibus, quo plus propter virtutem nobilitatemque possunt, eo minus quantum possint debent ostendere. Quum tot tantisque difficultatibus affectus atque afflictus in tuam, C. Aquilli, fidem, veritatem, misericordiam P. Quintius confugerit, quum adhuc ei propter vim adversariorum non jus par, non agendi potestas eadem, non magistratus aequus reperiri potuerit; quum ei summam per injuriam omnia inimica atque infesta fuerint; te, C. Aquilli, vosque qui in consilio adestis orat atque obsecrat, ut multis injuriis jactatam atque agitatam aequitatem in hoc tandem loco consistere et confirmari patiamini. III. Id quo facilius facere possitis, dabo operam ut a principio res quemadmodum gesta et contracta sit cognoscatis.

C. Quintius fuit P. Quintii hujus frater; sane ceterarum rerum paterfamilias et prudens et attentus, una in re paullo minus consideratus qui societatem cum Sex. Naevio fecerit, viro bono, verumtamen non ita instituto ut jura societatis et officia certi patrisfamilias nosse posset: non quo ei deesset ingenium; nam neque parum facetus scurra Sex. Naevius, neque inhumanus praeco est

ita diligenter] See Vol. I. Verr. ii. 1. c. 18, and 2. c. 30; and Pro P. Quint. c. 4; "nec ita multo post," and "ita commode."

3. *contracta*] 'Contrahere' and 'contractus,' are the Roman terms which express some certain kinds of agreements. The word 'contracta' refers to the partnership between Quintius and Naevius. The opposite of 'contracta' is 'distracta:' Paulus, when he is speaking of the contract of buying and selling, says (Dig. 18. 1. 1. § 2) "et inter absentes contrahi potest."

C. Quintius fuit] "There was one C. Quintius, a brother of P. Quintius here." See Vol. I. Div. c. 17.

paterfamilias] The technical or legal meaning of 'paterfamilias' is defined by Paulus (Dig. 50. 16. 195); but here it simply means a good manager. Cato (De Re R. c. 2) describes one to his mind. In c. 17, Cicero quotes a proverb 'De scurra, &c.' which explains the meaning of 'paterfamilias.'

Lambinus found a difficulty in the genitive 'ceterarum rerum,' which he injudiciously proposed to alter to 'cetera.' But other critics have observed this use of the Latin genitive, which ought not to be taken as an imitation of a Greek form of expression. In the De Sen. c. 2, there is "ceterarum rerum tuam excellentem, M. Cato, sapientiam;" and there are other like instances.—'instituto:' "he was not brought up in such a way as to know the just rules of partnership, or the duties of a steady husbander." See Vol. I. Div. c. 21. 'Certus' is 'sure,' 'trusty.' But sometimes it means a definite, ascertained person (Vol. I. Verr. ii. 2. c. 39). Gaius (ii. 152) says, "qui societatem contrahit, certam personam sibi eligit."

scurra—praeco] Horace (2 Sat. 3. v. 229) has "Cum scurris fartor," &c. The 'scurra' was a kind of parasite, a diner-out, a fellow who pays for his entertainment by amusing the company; a gossip, a carrier of scandal and lies (Macleane's Horace, p. 440). Horace often touches on the 'scurra' (1 Sat. 8. v. 20; 1 Ep. 18. v. 10); and Plautus has a few words about him (Trinum. v. 199, &c.)

The great difficulty in translating is sometimes not so much in the construction, as in single words, such as 'scurra' and

umquam existimatus. Quid ergo est? Quum ei natura nihil melius quam vocem dedisset, pater nihil praeter libertatem reliquisset, vocem in quaestum contulit; libertate usus est quo impunius dicax esset. Quare quod socium tibi eum velles adjungere nihil erat, nisi ut in tua pecunia condisceret qui pecuniae fructus esset. Tamen inductus consuetudine ac familiaritate Quintius fecit, ut dixi, societatem earum rerum quae in Gallia comparabantur. Erat ei pecuaria res ampla et rustica sane bene culta et fructuosa. Tollitur ab atriis Liciniis atque a praeconum consessu in Galliam Naevius, et trans Alpes usque transfertur. Fit magna mutatio loci, non ingenii. Nam qui ab adolescentulo quaestum sibi instituisset sine impendio, posteaquam nescio quid impendit et in commune contulit, mediocri quaestu contentus esse non poterat. Nec mirum, si is qui vocem venalem habuerat ea quae voce quaesierat magno sibi quaestui fore putabat. Itaque hercule haud mediocriter de communi quidquid poterat ad se in privatam domum sevocabat. Qua in re ita diligens erat, quasi ii qui magna fide societatem gererent

'dicax.' Cicero is generally the best expositor of his own expressions. It was a Roman fashion to try to say good things; a privilege of freemen, however. A slave must keep his wit to himself or his companions. Cicero does not allow an orator to go beyond 'facetiae.' One kind of 'facetiae' lay in the ambiguity or double meaning of the expression; and he adds, "is qui appellatur dicax, hoc genere maxime excellit" (De Or. ii. 62). But the man who would be 'dicax' sometimes falls into the 'vitium scurrile;' he becomes coarse and vulgar. Cicero's remark is good: "Temporis igitur ratio, et ipsius dicacitatis moderatio et temperantia, et raritas dictorum, distinguet oratorem a scurra; et quod nos cum caussa dicimus, non ut ridiculi videamur, sed ut proficiamus aliquid, illi totum diem et sine caussa" (De Or. ii. 60). All men talk; but they talk to very different purposes.

The meaning of 'praeco' is explained by what follows, and by c. 15. He is a person who cries or calls out any thing aloud, either at sales or on other occasions (c. 5); a crier in a court of justice (Verr. ii. 2. c. 30).

The root of the word is 'con;' but it is doubtful what it really is. See Hor. 1 Sat. 6. v. 86. Naevius was, it seems, a crier at auctions; the man who called out the conditions of sale, and other matters; and the usual place for men of his class was the Atria Licinia (comp. Vol. I. Verr. ii. 3. c. 62).

Klotz refers to the Tabula Heracl. (Mazochi, p. 415) to show that a 'praeco' could not, in a Municipium, Colonia, or Praefectura, hold the office of Decemvir, Quatuorvir, or be there a Senator or Decurio. But this Lex was made for the Municipia, Coloniae, and Praefecturae; and the terms of the Lex manifestly do not apply to Rome. Nor does the passage (Cicero, Ad Div. vi. 18), which Klotz quotes—"statim quaesivi e Balbo per codicillos"—prove any thing as to the condition of 'praecones' at Rome. Neither of these passages proves that they had political incapacities at Rome in consequence of their occupation. But there is little doubt that such an occupation was considered low and mean, though I suppose that a 'praeco' may be as good a man as a senator.

An Atrium was a court or yard surrounded by a portico; also a part of a Roman house. Auctions were held (Cic. in Rull. i. 3), and auctioneers met in places or buildings called Atria.

societas earum, &c.] See Vol. I. Verr. ii. 2. c. 70. This was a limited partnership between Quintius and Naevius; but Naevius put something into the partnership. The matter of the partnership was a farm in Gallia, and stock, sheep, and cattle. The place seems to have been just within the limits of the Roman provincia. The sheep-farming of the Romans in the provinces is discussed under the oration Pro Lege Manilia.

arbitrium pro socio condemnari solerent. Verum his de rebus non necesse habeo dicere ea quae me P. Quintius cupit commemorare; tametsi caussa postulat, tamen, quia postulat, non flagitat, praeteribo. IV. Quum annos jam complures societas esset, et quum saepe suspectus Quintio Naevius fuisset, neque ita commode posset rationem reddere earum rerum quas libidine non ratione gesserat, moritur in Gallia Quintius, quum adesset Naevius, et moritur repentino: heredem testamento reliquit hunc P. Quintium; ut, ad quem summus maeror morte sua veniebat, ad eumdem summus honos quoque perveniret. Quo mortuo, nec ita multo post in Galliam proficiscitur Quintius. Ibi cum isto Naevio familiariter vivit. Annum fere una sunt, quum et de societate inter se multa communicarent et de tota illa ratione atque re Gallicana, neque interea verbum ullum interposuit Naevius aut societatem sibi quidpiam debere aut privatim

arbitrium, &c.] He says sarcastically that Naevius took great pains to cheat his partner, just as if the rule was that in a trial between partners before an arbiter, it was usual for the arbiter to give judgment against a partner who did his duty. Naevius, says Cicero, secured himself against this risk by cheating his partner. See Pro Rosc. Com. c. 5.

There is no MSS. variation in the reading 'arbitrium.' Manutius proposes 'ad arbitrium;' others propose 'arbitrio,' and 'ad arbitrum.' See Pro Rosc. Com. c. 9. Graevius supposes that 'arbitrium' has been transferred into the text from the margin, where it was marked as a word of explanation; but it appears to be genuine.

necesse habeo, &c.] Cicero uses the infinitive in this way (Ad Att. x. 1), "eo minus habeo necesse scribere."

4. *moritur repentino:*] It is plain that this is intended to bring some suspicion on Naevius. It was a bad habit, as Klotz says, of the Romans, and, I suppose, we may add the Greeks, to insinuate what could not be proved. The German considers that modern practice is quite free from this blame: but he is mistaken there.

summus honos] This is a Roman expression for a Roman notion, which requires explanation. Cicero says (Pro Caecina, c. 4): "usumfructum omnium bonorum Caesenniae legat ut frueretur cum filio. Magnus honos viri jucundus mulieri fuisset, si diuturnum esse licuisset." It was considered a mark of respect to receive a testamentary gift from a kinsman, and to be passed over in his testament was a mark of disrespect. Augustus (Sueton. 26) did not like being passed over in the testaments of his friends ('citra honorem verborum'). This notion was the foundation of the action called Querela Inofficiosi (Testamenti), which might be brought by any kinsman, who in the case of the testator's intestacy, would have been one of his Heredes. The direct object of this action was to obtain a share of the Hereditas: but the ultimate object was the restoration of the injured honour of the complainant, for the omission of his name in the will was an Injuria. It is not known whether this action existed in Cicero's time, but the notion on which it was founded did exist. (Savigny, System, &c. ii. 127.)

nec ita] 'Neque ita,' K.: 'nec ita:' Orelli and others. Manutius compares 'nec ita' with 'nec opinantem.' 'Nec' is sometimes used thus emphatically: "Maherbal cum majore robore virorum missus nec ipse eruptionem cohortium sustinuit." (Liv. xxiii. 18).

societatem sibi] The partnership was dissolved by the death of C. Quintius, according to a fundamental rule of the law of partnership (Gaius, iii. 152); and for a whole year Naevius made no claim in respect of the partnership. P. Quintius succeeded to the share of C. Quintius, whatever it was. Nothing is said as to the division of the property of the former partnership. The small amount of debt (aeris alieni aliquantulum) means debt left by C. Quintius (c. 23) which P. Quintius was bound to pay. The money was payable at Rome, and Naevius, who said that he had money at Rome, offered to

Quintium debuisse. Quum aeris alieni aliquantulum esset relictum, quibus nominibus pecuniam Romae curari oporteret, auctionem in Gallia P. hic Quintius Narbone se facturum esse proscribit earum rerum quae ipsius erant privatae. Ibi tum vir optimus Sex. Naevius hominem multis verbis deterret ne auctionetur; eum non ita commode posse eo tempore quae proscripsisset vendere; Romae sibi nummorum facultatem esse, quam, si saperet, communem existimaret pro fraterna illa necessitudine et pro ipsius affinitate. Nam P. Quintii consobrinam habet in matrimonio Naevius et ex ea liberos. Quia quod virum bonum facere oportebat, id loquebatur Naevius, credidit Quintius eum qui orationem bonorum imitaretur facta quoque imitaturum. Auctionem velle facere desistit: Romam proficiscitur: decedit ex Gallia Romam simul Naevius. Quum pecuniam C. Quintius P. Scapulae debuisset, per

accommodate P. Quintius with it, to save him the trouble of selling some property in Gallia. Some of the commentators take 'ipsius erant privatae,' to refer to C. Quintius, but it ought to mean P. Quintius. It is immaterial however which is meant: it was some property that did not belong to the partnership. It may have been the property of C. Quintius; but it was now the property of P. Quintius, as we must assume, for we are not told that P. Quintius had any property in Gallia except what came to him from his brother. He intended to sell something at Narbo, Narbonne on the Aude, a Roman colony in the Provincia of Gallia Narbonensis, and the second colony which the Romans had settled in that country (B.C. 118).

It is impossible to get a clear notion of the state of affairs between Naevius and P. Quintius from Cicero's statements. The words 'de societate inter se multa communicarent,' have been misunderstood. The partnership was dissolved by the death of C. Quintius, and Naevius and P. Quintius ought to have settled the old partnership account, and it is said that it was settled (c. 6). But it seems that they continued to hold some of the property at least in common, which they could do without any formal agreement, for partnership is one of those contracts which were said to be made 'consensu' (Gaius, iii. 135), without any formal agreement. 'Communicare' is the legal term to express the act of partners making a common stock; and the explanation of the words 'de societate, &c.' is that out of the old partnership stock they made a new partnership. It appears from c. 6 and c. 30 that there was a 'saltus et ager communis,' and also 'servi communes.'

'Quibus nominibus' refers to the debts due: see Vol. I. Verr. ii. 1. c. 38. The construction is elliptical, like the following (Verr. ii. 5. c. 69): "Quam non is promulgavit quo nomine proscriptam videtis," except that the antecedent of 'quibus' is omitted, but it is contained in 'aeris alieni aliquantulum,' an expression equivalent to 'nomina,' which explains why 'nominibus' is added to 'quibus.' 'Curare' is a word used in speaking of payments of money. Cicero says (Ad Att. i. 8): "L. Cincio ... pro signis Megaricis .. curavi." See Vol. I. Verr. ii. 2. c. 23.

hominem] Compare Vol. I. Verr. ii. 2. c. 28, 'monet hominem.' This use of 'homo' merely marks a person emphatically. It is not itself either a word of approbation or disapprobation. Caesar (B. G. v. 58) has 'comprobat hominis consilium fortuna,' which, as Schneider observes, directs attention to the character of the person, whatever it may be.

auctionem] See Vol. I. Verr. ii. 2. c. 19. —'proscripsisset:' Vol. I. Verr. ii. 1. c. 15.

P. Scapulae] He was one of the creditors of C. Quintius, but he was dead, and the money was to be paid to his children by P. Quintius, who settled (decidit) by means of Aquillius what he should pay. Menard supposes that C. Quintius and P. Scapula had been partners in farming some part of the public revenue, and that there was a debt due from them to the Roman aerarium; and so forth. All this is nothing to the purpose. We do not know what the debt was. It was an amount due in some money

te, Aquilli, decidit P. Quintius quod liberis ejus dissolveret. Hoc eo per te agebatur, quod propter aerariam rationem non satis erat in tabulis inspexisse quantum deberetur, nisi ad Castoris quaesisset quantum solveretur. Decidis statuisque tu propter necessitudinem quae tibi cum Scapulis est, quid iis ad denarium solveretur.

V. Haec omnia Quintius agebat auctore et consuasore Naevio. Nec mirum, si ejus utebatur consilio cujus auxilium sibi paratum putabat. Non modo enim pollicitus erat in Gallia; sed Romae quotidie, simul atque sibi hic annuisset, numeraturum se

or in some thing that had to be reduced to its value in Roman money (ad denarium), and it has been generally assumed that it is the difference in Gallic and in Roman money, which is here alluded to; though there is no proof of that. But it seems that owing to some difference in money of some kind, the amount of the debt as it appeared from the written evidence (tabulae), must be ascertained in Roman denarii. Instead of 'ad Castoris' there is the reading 'ad quaestoris,' 'a quaestoribus,' and 'ad Castoris templum.' Menard followed one of these readings, which shows the reason of his explanation. Graevius cites Juvenal (xiv. 260):

—"aerata multus in arca
"Fiscus, et ad vigilem ponendi Castora nummi."

The temple of Castor and Pollux was in the Forum Romanum, and near it were the bankers' counting houses. A man would deposit his money with the banker, who kept a box for each depositor, and placed these boxes for safe keeping in the temple. This is Heinrich's explanation of the passage in Juvenal. The temple was watched. The passage in Cicero then means that it was necessary to go to the banker's at Castor's to ascertain what must be paid in denarii. There are other explanations of this passage. Manutius supposes that 'ad denarium solvere' means to pay fully, to the last denarius, an explanation which seems to me to be contradicted by the whole passage. He also supposes 'aeraria ratio' to allude to the variation in the value of the money, gold or silver; and he refers to the passage in Cicero (De Off. iii. 20), which speaks of the uncertainty of the value of 'nummus,' a passage, the exact meaning of which is not clear to me.

Niebuhr rejects the explanation of Manutius, to which he objects among other things that 'aeraria ratio' can have no reference to the value of money, which would be expressed by 'argentaria ratio.' He also rejects the explanation which has been given here, which is the common explanation. He assumes it to be certain that the words 'aeraria ratio' refer to the Lex Valeria, by which all debts were reduced to one fourth (Vell. ii. 4; Cicero, Pro Fonteio, c. 1; Sallust, Cat. c. 33). He thinks that this explains the contrast between 'quantum deberetur' and 'quantum solveretur.' He then gives some arguments to show that this reckoning in consequence of the Lex Valeria might be a very complicated thing. I should suppose that it would be a very simple thing. He fails completely in explaining 'ad denarium.'

There can be little doubt that 'ad denarium solvere' means to pay in denarii, or Roman silver coin; and the difficulty is in the words 'aeraria ratio.' But as 'aes' is a general name for money, including even gold, as Ulpian says, there is no reason why 'aeraria ratio' may not mean the same as 'argentaria ratio;' and besides this, I find no evidence that 'argentaria ratio' was used in the sense that Niebuhr supposes. It meant something else. The debt of C. Quintius to the heredes of Scapula was payable at Rome (Romae curari oporteret). This is all that we know about the debt. The amount was known from the books or papers (tabulae); but the 'aeraria ratio' made it necessary to ascertain what was to be paid 'ad denarium.' There seems to be a plain connexion between 'aeraria ratio' and 'ad denarium,' by which I mean that the amount of the debt was to be ascertained in denarii; and this implies that it did not appear from the books what it was in denarii. It might be in some other coin, or even not in money. (Dig. 46. 3. 50, 57.)

5. *annuisset,*] Lambinus would write 'innuisset,' because 'annuere,' he says, means to express assent by a nod. If 'annuisset' is right, it means as soon as he signified that he wanted the money.

dicebat. Quintius porro istum posse facere videbat; debere intelligebat: mentiri, quia caussa cur mentiretur non erat, non putabat: quasi domi nummos haberet, ita constituit Scapulis se daturum. Naevium certiorem facit: rogat ut curet quod dixisset. Tum iste vir optimus, (vereor ne se derideri putet, quod iterum jam dico, optimus,) qui hunc in summas angustias adductum putaret, ut eum suis conditionibus in ipso articulo temporis astringeret, assem sese negat daturum, nisi prius de rebus rationibusque societatis omnibus decidisset, et scisset sibi cum Quintio controversiae nihil futurum. Posterius, inquit, ista videbimus, Quintius; nunc hoc velim cures, si tibi videtur, quod dixisti. Negat se alia ratione facturum quod promisisset; non plus sua referre, quam si, quum auctionem venderet, domini jussu quidpiam promisisset. Destitutione illa perculsus Quintius a Scapulis paucos dies aufert: in Galliam mittit, ut ea quae proscripserat venirent: deteriore tempore absens auctionatur: Scapulis difficiliore conditione dissolvit. Tunc appellat ultro Naevium ut, quoniam suspicaretur aliqua de re fore controversiam, videret ut quam primum et quam minima cum molestia tota res transigeretur. Dat iste amicum M. Trebellium: nos communem necessarium, qui istius domi erat

constituit] This is a technical term, which signifies the promise to pay an existing debt. The money was due to the Scapulae, and Quintius named a time for payment. See Dig. 13, tit. 5, 'De pecunia constituta.' Ulpian (Dig. 13. 5. 5) says: "Eum qui Ephesi promisit se soluturum, si constituat alio loco se soluturum, teneri constat." The words of the edict show what 'constituere' is: 'Qui pecuniam debitam constituit.' Cicero uses the word 'constituere' elsewhere (Ad Att. i. 7). The constitutum gave a new right of action, Constitutoria Actio, in which however the acknowledgment of the prior obligation was implied.

facturum quod promisisset;] Lambinus, who has been followed by all the editors, I believe, except Keller, points it thus: "facturum; quod promisisset, non plus &c."—'auctionem vendere:' this expression does not occur elsewhere; and several MSS. have 'auctione vendere.' Turnebus compares 'auctionem vendere' with Caesar's expression (B. G. iii. 33), 'sectionem ejus oppidi universam Caesar vendidit.'

Naevius says that his promise did not concern him any more than if, when he was acting as auctioneer, he said or promised any thing according to the instructions of the vendor (dominus). Keller observes on this passage: "Jus autem hujus loci pessime Klotzius interpretatus est." Naevius was not bound by his promise to Quintius: it did not make an Obligatio. I don't see what more is meant.

aufert:] 'He gets a few days,' as we say. Cicero often uses 'auferre' in this or a like sense. "Ita Pamphilus scyphos optimos aufert" (Verr. ii. 4, c. 14), 'Pamphilus saves his precious cups.' See also c. 9.

appellat ultro] "Then Quintius on his part calls on Naevius.' He does not wait for Naevius to apply to him. Or it may mean, 'After settling with the Scapulae, he proceeds to deal with Naevius.' See Vol. I. Verr. ii. 2. c. 2, and ii. 3. c. 98. Ovid (Met. iii. 457), has explained 'ultro' in the story of Narcissus:

"Spem mihi nescio quam vultu promittis amico,
Cumque ego porrexi tibi brachia, porrigis ultro."

transigeretur.] See Vol. i. Verr. ii. 2. c. 32. Ulpian (Dig. 2. 15. 1) explains the term: "Qui transigit, quasi de re dubia et lite incerta neque finita transigit; qui vero paciscitur, donationis caussa rem certam et indubitatam liberalitate remittit."

educatus et quo utebatur iste plurimum, proquinquum nostrum, Sex. Alfenum. Res convenire nullo modo poterat, propterea quod hic mediocrem jacturam facere cupiebat, iste mediocri praeda contentus non erat. Itaque ex eo tempore res esse in vadimonium coepit. Quum vadimonia saepe dilata essent et quum aliquantum temporis in ea re esset consumptum neque quidquam profectum esset, venit ad vadimonium Naevius. VI. Obsecro te, C. Aquilli, vosque, qui adestis in consilio, ut diligenter attendatis, ut singulare genus fraudis et novam rationem insidiarum cognoscere possitis. Ait se auctionatum esse in Gallia: quod sibi videretur se vendidisse; curasse ne quid sibi societas deberet; se jam neque vadari amplius neque vadimonium promittere. Si quid agere secum velit Quintius, non recusare. Hic quum rem Gallicanam cuperet revisere, hominem in praesentia non vadatur. Ita sine vadimonio disceditur. Deinde Romae dies XXX fere Quintius commoratur. Cum ceteris quae habebat vadimonia differt, ut expeditus in Galliam proficisci posset. Proficiscitur. Roma egreditur ante diem IV Kalend. Februarias Scipione et Norbano Coss. Quaeso ut eum diem memoriae mandetis. L. Albius, Sex. filius, Quirina, vir bonus et cum primis honestus una profectus est. Quum venissent ad Vada Volaterrana quae nominantur, vident perfamiliarem Naevii, qui ex Gallia pueros venales isti adducebat, L. Publicium, qui, ut Romam venit, narrat Naevio quo in loco viderit Quintium. Quod nisi ex Publicio narratum Naevio esset, non tam cito res in contentionem venisset. Tum Naevius pueros circum amicos dimittit: ipse

res esse in vadimonium, &c.] This use of 'esse in' with an accusative is a genuine Roman form (Vol. I. Verr. ii. 2. c. 27). The two men who were chosen could not settle the affair; and the matter began, as Cicero expresses it, to be 'in vadimonium;' which it is almost impossible to translate. The nature of the 'vadimonium' is explained in Vol. I. Ver. ii. 3. c. 15. As the thing could not be settled in a friendly way, it must be settled by legal means; and the first step was the 'vadimonium.' The meeting for the purpose of the 'vadimonium' had often been put off, but finally Naevius came to the 'vadimonium;' not to make his appearance pursuant to a 'vadimonium,' but to settle the 'vadimonium.' In the next chapter, Naevius, after coming to the place, is said to have declared that he had no demand in respect of the partnership; and that he neither claimed a 'vadimonium' from P. Quintius (neque vadari), nor was he willing to promise a 'vadimonium' to him. Finally, there was no 'vadimonium' between Naevius and Quintius; and Quintius, after adjourning by agreement any suits that he had with others (vadimonia differt), set out from Rome.

6. *Quirina*] This is the ablative case, and denotes the man's 'tribus.' See Vol. I. i. c. 8: 'Q. Verrem Romilia.' There is a reading 'Quirinas.'—'Ad Vada Volaterrana:' the place was in Etruria, on the coast north of the river Caecina. Here they were met by L. Publicius, who was taking Gallic slaves to Naevius at Rome for sale. Slave dealing was one way in which the Romans made money in the provinces. The supply from Gallia might be either from prisoners taken in war, or from the practice of the Galli selling their own children to the Roman mercatores, as Diodorus describes it (v. 26).

suos necessarios ab atriis Liciniis et a faucibus macelli corrogat, ut ad tabulam Sextiam sibi adsint hora secunda postridie. Veniunt frequentes. Testificatur iste, P. QUINTIUM NON STITISSE ET SE STITISSE: tabulae maximae signis hominum nobilium consignantur: disceditur. Postulat a Burrieno praetore Naevius ut ex edicto bona possidere liceat. Jussit bona proscribi ejus, quicum familiaritas fuerat, societas erat, affinitas liberis istius vivis divelli nullo modo poterat. Qua ex re intelligi facile potuit nullum esse officium tam sanctum atque sollemne quod non avaritia com-

faucibus macelli] See Vol. I. Verr. ii. 3. c. 62.—The Tabula Sextia was the counter of some banker (argentarius). A Tabula Valeria is spoken of in the oration In Vatin., c. 9.

non stitisse] He who kept his 'vadimonium,' who appeared at the time and place at which he was bound to appear, was said 'sistere vadimonium.' The reading 'stetisse' is wrong. Gellius (ii. 14) has a remark on those false and audacious 'emendatores' who altered the text in an old work of M. Cato from 'vadimonium ... stitisses' to 'vadimonium ... stetisses.' The MSS., most, if not all, seem to have 'stetisse' in this passage. We learn from this passage how evidence was recorded of a man's not appearing.

ex edicto bona] "Praetor ait: In bona ejus qui judicio sistendi caussa fidejussorem dedit, si neque potestatem sui faciet neque defendetur, iri jubebo" (Ulpian, Dig. 42. 4. 2). Keller (p. 70, note) observes that Klotz, who follows Hotmann, is greatly mistaken when he supposes that the property must have been in possession of Naevius thirty days before he could give notice of sale (proscribere). Certainly the words of Gaius (iii. § 79) show that the 'proscriptio' might be made as soon as the property was seized: "Siquidem vivi bona veneant, jubet ea Praetor per dies continuos XXX possideri et proscribi; si vero mortui, post dies XV: postea jubet convenire creditores et ex eo numero magistrum creari, id est, eum per quem bona veneant."

There has been much discussion as to what was done by the Praetor when he gave a creditor permission to seize a debtor's property. Some modern writers suppose that the Praetor heard the case and made a formal decretum. Keller justly denies this. The speech of Cicero shows clear enough that there was no formal hearing and decree. Indeed there could not be, for Naevius obtained the order, when Quintius was absent, and no friend of Quintius was present ('nemo adfuit,' c. 19). Keller does not express himself very clearly, but he comes to the conclusion that he can easily believe, that it was customary for the postulant to show some cause for his demand, and that the evidence which Naevius took care to secure of Quintius having broken his 'vadimonium,' was for the purpose of his application to the Praetor. Who can doubt that the postulant must have given some evidence to the Praetor, which would be sufficient to make out a probable case, just as in our equity proceedings a man may obtain a special injunction by making out a sufficient case? The order or permission to seize the debtor's property was executed at the risk of the postulant ('praetor non fieri, sed ex edicto suo fieri jubebat,' c. 19). Thirty days must elapse before any thing could be done; and in the mean time the defendant had the opportunity of disputing the postulant's right to the possession. The mere fact of possession for less than thirty days did not prejudice the debtor in any way. But the postulant or creditor, if it was ultimately proved that he had no title, would suffer for his wrongful act (Gaius, iii. § 220). Ulpian (Dig. 43. 4. 1. § 5), quoted by Keller, is clear enough: "Proinde si ob falsum creditum vel ob falsam petitionem missus est in possessionem, vel si exceptione summoveri potuit, nihil ei debet prodesse hoc edictum, quia propter nullam caussam in possessionem missus est."

affinitas] See Vol. I. Verr. ii. 2. c. 14. 'Affinitas' properly exists so long as the marriage exists which is its foundation. "Affinitates non eas accipere debemus quae quondam fuerunt, sed praesentes" (Dig. 3. 1. 3. § 1). Compare Gaius, i. 63. Cicero here makes the 'affinitas' continue so long as the children of this marriage (c. 5) lived; but nothing can be concluded from such a passage as this. He is perhaps speaking 'oratorie' (Vol. I. Verr. ii. 3. c. 34). See Pro Sextio, c. 3.

minuere atque violare soleat. Etenim si veritate amicitia, fide societas, pietate propinquitas colitur, necesse est iste, qui amicum, socium, affinem, fama ac fortunis spoliare conatus est, vanum se et perfidiosum et impium esse fateatur. Libellos Sex. Alfenus, procurator P. Quintii, familiaris et propinquus Sex. Naevii, dejicit: servulum unum quem iste prehenderat abducit: denuntiat sese procuratorem esse: istum aequum esse famae fortunisque P. Quintii consulere et adventum ejus exspectare. Quod si facere nolit atque imbiberit ejusmodi rationibus illum ad suas conditiones perducere, sese nihil precari; et si quid agere velit, judicio defendere. Haec dum Romae geruntur, Quintius interea contra jus, consuetudinem, edicta praetorum de saltu agroque communi a servis communibus vi detruditur. VII. Existima, C. Aquilli, modo et ratione omnia Romae Naevium fecisse, si hoc, quod per litteras istius in Gallia gestum est, recte atque ordine factum videtur. Expulsus atque ejectus e praedio Quintius, accepta insigni injuria, confugit ad C. Flaccum imperatorem qui tum erat in provincia: quem, ut ipsius dignitas poscit, honoris gratia nomino. Is eam rem quam vehementer vindicandam putarit, ex decretis ejus poteritis cognoscere. Alfenus interea Romae cum isto gladiatore vetulo quotidie pugnabat. Utebatur populo sane suo,

Libellos—procurator] The 'libelli' were the public notices of the sale of the property of Quintius (c. 15). The posting of the 'libelli' was the 'proscriptio.' The term 'procurator' is explained Vol. I. Divin. c. 4.

imbiberit] There is a reading 'inhibuerit,' and other varieties; but P. Manutius restored the word 'imbiberit,' of which use he cites two examples from Lucretius. One is this (iii. 997, ed. Lachmann):

"Qui petere a populo fasces saevasque secures
Imbibit."

Manutius explains 'imbibere' to mean 'to resolve with a certain eagerness, and to desire with a kind of thirst.'

saltu, &c.] The 'saltus' was the pasture land in the forests on the hills. The 'ager communis' was the land held in partnership by Naevius and C. Quintius, for we know of no other 'ager communis' (c. 3). As it was still 'communis,' it appears to have been held as partnership property by Naevius and P. Quintius, as it must have been, till their affairs were settled. Quintius being forcibly ejected, applied to the governor, C. Flaccus, and claimed the 'Interdictum de vi,' or an order for the restoration of the possession, on the ground of being forcibly ejected. In such cases the Praetor or other person who had authority, gave a judgment or made an order himself, without the intervention of a Judex, and the order was called in some cases a 'decretum;' as Gaius says (iv. 139): "vocantur autem decreta cum fieri aliquid jubet, velut cum praecipit ut aliquid exhibeatur aut restituatur." But we do not know what Flaccus did.

7. *honoris gratia*] Comp. Pro Sex. Roscio Amer. c. 2, 6, 10, 15. Cicero says 'honoris caussa' (Vol. I. Ver. ii. 5. c. 7); and Caesar (B. G. ii. 15) has the same expression: "Caesar honoris Divitiaci atque Aeduorum caussa sese eos," &c. It means here that the particular mention of the governor's name is intended as a mark of respect to him.

sane suo,] Quintius had opinion in his favour. The word 'caput' contains an ambiguity or double meaning. He had just called Naevius an old practised gladiator, whom he now represents as aiming at the head (caput) of his adversary. But 'caput' also means the best interests and fortunes of Quintius.

propterea quod iste caput petere non desinebat. Iste postulabat ut procurator judicatum solvi satisdaret. Negat Alfenus aequum esse procuratorem satisdare quod reus satisdare non deberet, si ipse adesset. Appellantur tribuni, a quibus quum esset certum auxilium petitum, ita tum disceditur ut Idibus Septembribus P. Quintium sisti Sex. Alfenus promitteret. VIII. Venit Romam Quintius: vadimonium sistit. Iste, homo acerrimus, bonorum possessor, expulsor, ereptor, annum et sex menses nihil petit: quiescit: conditionibus hunc quoad potest producit: a Cn. Dolabella denique praetore postulat ut sibi Quintius judicatum solvi satisdet ex formula: QUOD AB EO PETAT, CUJUS EX EDICTO PRAE-

judicatum solvi] See Vol. I. Ver. ii. 2. c. 25. A procurator was bound to give security that the principal (dominus) would abide by the judgment: "procurator vero si agat satisdare jubetur ratam rem dominum habiturum" (Gaius, iv. 98). Alfenus appealed to the Tribuni Plebis, whose 'intercessio' was the 'auxilium.' Cicero does not say what was the subject of the appeal. The tribuni did not reverse the decree (c. 20), and Alfenus was ordered to engage that P. Quintius should appear on the Ides of September. Keller has discussed all this matter at great length (p. 114, &c.).

If the law was the same in Cicero's time as when Gaius wrote, it is certain that Alfenus could not act as the procurator of Quintius without giving the security which Naevius demanded. We have in Cicero himself an example of 'procuratores' undertaking to give security 'judicatum solvi' (Vol. I. Verr. ii. 2. c. 24); in Sicily, it is true, but that makes no difference, for it was Roman law. What then can Cicero mean when he makes Alfenus, who was bound as a procurator to give security, refuse because, as he alleged, Quintius would not have been bound to give security? For this is the same as affirming that a procurator was not bound to give security. The matter stands thus: Naevius maintained that Alfenus, as procurator, ought to give the security; and Alfenus refused for the reason above stated. It might be conjectured that the practice was not so well settled as to be free from doubt; but I do not accept that conjecture. The refusal of Alfenus was not founded on the allegation that the property of Quintius had not been seized 'ex edicto.' He does not say that; he alleges another reason. Keller indeed makes it appear very probable that this refusal of Alfenus took place soon after the alleged seizure, and within the thirty days (cc. 6, 16, 17, 18). The conclusion is that Alfenus was wrong in refusing to give security; and as the Praetor required him to give it, he could not be the procurator of Quintius. The appeal to the Tribuni could not be directly against the Praetor's decree, because the College of Tribuni could not reverse such a decree; and it is also certain that the Praetor was following the usual practice in requiring a procurator to give security. What then did Alfenus apply to the Tribuni for? It is hard to say; but so much may be true, that after having tried to become the procurator of Quintius without complying with the usual terms, and failing in this, he tried the College of Tribuni to see if they would do any thing for Quintius. Alfenus applied for 'certum auxilium,' whatever that means; and he got something. He consented indeed to promise that Quintius should appear at Rome by a certain day; but he thus gained time, and all proceedings were stayed (see c. 20, note).

Keller's long discussion of this matter is very ingenious, and most of it probably is true. It is rather hard to follow him all through, especially as his Latin is far from being easy.

8. *conditionibus — producit:*] Terence (Andr. 4. 1. 24) explains this:

"Nisi me lactasses amantem et falsa spe produceres."

Naevius amused Quintius, as Cicero says, by talking about coming to terms, while he meant nothing.

quod ab eo petat,] All the MSS. are said to have "quod ab eo petat quoniam ejus," &c. 'Cujus' is Lambinus' emendation; and it is probably right. Menardus proposed to read "Quod ab eo petat pecuniam cujus," &c., which reading would show what the demand against Quintius was in respect of which Naevius made this claim. But the insertion of a word in the

TORIS BONA DIES XXX POSSESSA SINT. Non recusabat Quintius quin ita satisdare juberet, si bona possessa essent ex edicto. Decernit, quam aequum, nihil dico: unum hoc dico, novum: et hoc ipsum tacuisse mallem, quoniam utrumque quivis intelligere potuisset. Jubet P. Quintium sponsionem cum Sex. Naevio facere: SI BONA SUA EX EDICTO P. BURRIENI PRAETORIS DIES XXX POSSESSA NON ESSENT. Recusabant qui aderant tum Quintio: demonstrabant de re judicium fieri oportere, ut aut uterque inter se aut

text is more than we can allow. It is not said what the demand of Naevius was; but as he made some demand against a man whose property had been taken possession of under a decree, and had been held for thirty days, he claimed a right to have from Quintius a "satisdatio judicatum solvi.'

possessa non essent.] 'Non' is omitted by Orelli and others. One Paris MS. (k. in Keller) has 'possessa essent;' all the rest of the Paris MSS. have 'possessa non essent.' Keller has collected the other reported readings of this passage, and the various opinions of the editors and commentators (p. 27). It is rather singular that most editors have rejected the 'non,' though the MSS. are in favour of it, and the sense requires it. Quintius did not object to give the required security, if his property had been possessed for thirty days; but he denied this fact. The Praetor accordingly determined to have this fact ascertained, and his order was that Quintius must prove it by becoming the plaintiff in a fictitious action. The form of the action was a Sponsio. Quintius would say to Naevius, as Keller correctly explains it, "Si bona mea ex edicto P. Burrieni Praetoris dies xxx possessa non sunt H. S. . . dare spondes?" to which Naevius must reply 'Spondeo.' There was no 'restipulatio,' for this was an 'actio praejudicialis.' Keller quotes a note of Burnouf, which is worth copying out, for this learned Frenchman saw clearly and has clearly explained the state of the case: "Névius promet purement et simplement la somme stipulée, sans exiger de Publius une promesse réciproque (non restipulatur). La raison en est que, s'il perd, il n'est pas tenu de payer la somme, parcequ'elle n'est pas pénale (non poenalis est). Elle est seulement préjudicielle (sed praejudicialis); c'est à dire, qu'elle n'est stipulée que pour servir en quelque sorte *de matière et d'objet* au jugement (ut per eam de re judicetur) dont l'effet se réduira d'ailleurs à établir, que Névius n'a pas possédé trente jours aux termes de l'édit."

It is clear from Cicero that 'non' is required, for he says (c. 10): "Negamus te bona P. Quintii, Sex. Naevi, possedisse ex edicto praetoris. In eo sponsio facta est." The expression 'sponsionem facere' is said both of the 'stipulator' and of the 'promissor.' It is said of the 'stipulator,' who is P. Quintius in this passage; in Cicero, Ad Fam. viii. 21; in Verr. ii. 3. c. 57, 59; and Pro Caecina, c. 16. It is said of the 'promissor,' of him who says 'spondeo,' in Pro Caecina, c. 28; Verr. ii. 5. c. 54; and in this oration, Pro Quintio, c. 14, "sponsionem de probro facere maluerit" is said of Naevius. See Vol. I. Ver. ii. 5. c. 54, and the note.

de re] The friends and advisers of P. Quintius (qui aderant), attempted to show to the Praetor that the trial or suit ought to be about the real question only (de re); and that either both parties should give security for the payment of any sum that might be found due from one to the other, or that neither party should give security; that there was no occasion for the character or good name of either party to come into question, which would be the case if the issue were tried, whether the property of Quintius had been duly taken possession of or not. And this would have been the right way of proceeding, if it were simply a question about the partnership account; but Naevius maintained that he had taken possession of the property of Quintius pursuant to the Praetor's edict, and that Quintius was bound to give him security for the payment of what might appear due to him on his demand, whatever it might be; or, if he denied that his property had been taken possession of, that question must be tried. Dolabella decided in favour of Naevius, and declared that Quintius must do the one or the other. Quintius accordingly, having chosen to try the question of the possession, became the plaintiff (ex sponso egit); and this was the matter for Aquilius to decide, whether there was a possession (ex edicto) by Naevius or not.

neuter satisdaret: non necesse esse famam alterius in judicium venire. Clamabat porro ipse Quintius sese idcirco nolle satisdare, ne videretur judicasse bona sua ex edicto possessa esse. Sponsionem porro si istiusmodi faceret, se (id quod nunc evenit) de capite suo priore loco caussam esse dicturum. Dolabella (quemadmodum solent homines nobiles: seu recte seu perperam facere coeperunt, ita in utroque excellunt ut nemo nostro loco natus assequi possit) injuriam facere fortissime perseverat: aut satisdare aut sponsionem jubet facere; et interea recusantes nostros advocatos acerrime submoveri. IX. Conturbatus sane discedit Quintius: neque mirum, cui haec optio tam misera tamque iniqua daretur ut aut ipse se capitis damnaret, si satisdedisset, aut caussam capitis, si sponsionem fecisset, priore loco diceret. Quum in altera re caussae nihil esset quin secus judicaret ipse de se, quod judicium gravissimum est; in altera spes esset ad talem tamen virum, judicem, veniendi, unde eo plus opis auferret quo minus attulisset gratiae, sponsionem facere maluit: fecit. Te judicem, C. Aquilli, sumpsit: ex sponso egit. In hoc summa judicii caussaque tota consistit.

Judicium esse, C. Aquilli, non de re pecuniaria, sed de fama fortunisque P. Quintii vides. Quum majores ita constituerint, ut

nostro loco natus] Cicero was not 'nobilis;' and he speaks of the 'nobiles' as a man in his station would do. He has something to the same purpose in the Verrine orations (Vol. I. Verr. ii. 3. c. 4; ii. 5. c. 70), though when he wrote that, he was 'aedilis designatus,' and had a prospect of attaining the highest honours. He does not speak in these terms of the 'nobiles' after he was consul.—'submoveri:' the friends of Quintius persisted in urging his case, and would not stop. The Praetor ordered them to be removed (submoveri) by his lictors. This is the word used to signify the putting of people on one side, moving them out of the way; and it is often used: (Liv. iii. 48), "I, inquit, lictor, summove turbam." Compare Horace, Carm. (ii. 16) and Juvenal i. 37 and Heinrich's note.

aut satisdare] 'aut satisdaret:' twelve of Keller's MSS.; and it may be the true reading. The Berne MS. has 'satisdari.'

9. *caussae nihil esset quin*] This expression occurs again (c. 18): "caussae nihil dicimus quin, &c." where the meaning is plain. Here he means, that if Quintius consented to give security, there was nothing to prevent his admission that his goods had been possessed, there was no reason or ground for denying it. Terence says (Phorm. ii. 1. 42): "non caussam dico quin quod meritus sit ferat," which means, 'I urge nothing against his suffering what he has deserved.'

judicem,—sumpsit:] The issue to be tried was now settled, and it remained to find a Judex who had to hear the evidence and to decide. The plaintiff, who is here Quintius, had a right of proposing a Judex ('judicem ferre;' Cic. De Orat. ii. 70; Vol. I. Verr. ii. 3. c. 60, and the note). Cicero proceeds to say that the trial before Aquillius was not about any matter of money (res pecuniaria), for the sum mentioned in the Sponsio was nominal; but it was to be decided whether the property of Quintius had been possessed, which was a thing discreditable to a man and affected his character. The issue being thus framed by the Praetor's order, it followed as a matter of course that Quintius must be the plaintiff and must begin, and Cicero's complaint on this head is absurd. Some editions have 'ex sponsu,' a form which is genuine (Gaius, iv. § 22).—'in jus adducerent:' Naevius had again applied to the Praetor to compel Aquillius to limit the time that the advocates should speak, for 'in jus' is before the Praetor.

qui pro capite diceret is posteriore loco diceret, nos, inaudita criminatione accusatorum, priore loco caussam dicere intelligis. Eos porro, qui defendere consuerunt, vides accusare: et ea ingenia converti ad perniciem, quae antea versabantur in salute atque auxilio ferendo. Illud etiam restiterat, quod hesterno die fecerunt, ut te in jus adducerent, ut nobis tempus quam diu diceremus praestitueres; quam rem facile a praetore impetrassent, nisi tu quod esset tuum jus et officium partesque docuisses. Neque nobis adhuc praeter te quisquam fuit, ubi nostrum jus contra illos obtineremus; neque illis umquam satis fuit illud obtinere quod probari omnibus posset. Ita sine injuria potentiam levem atque inopem esse arbitrantur. X. Verum quoniam tibi instat Hortensius ut eas in consilium; a me postulat ne dicendo tempus absumam; queritur priore patrono caussam defendente numquam perorari potuisse; non patiar istam manere suspicionem, nos rem judicari nolle; nec illud mihi arrogabo me posse caussam commodius demonstrare quam antea demonstrata sit: neque tamen tam multa verba faciam, propterea quod et ab illo, qui ante dixit, informata jam caussa est, et a me, qui neque excogitare neque pronuntiare multa possum, brevitas postulatur, quae mihimet ipsi amicissima est. Faciam quod te saepe animadverti facere, Hortensi: totam caussae meae dictionem certas in partes dividam. Tu id semper facis, quia semper potes. Ego in hac caussa faciam, propterea quod in hac videor posse facere. Quod tibi natura dat ut semper possis, id mihi caussa concedit ut hodie possim. Certos mihi fines terminosque constituam, extra quos egredi non possim, si maxime velim; ut et mihi sit propositum de quo dicam; et Hortensius habeat exposita ad quae respondeat, et tu, C. Aquilli, jam ante animo prospicere possis quibus de rebus auditurus sis. Negamus te bona P. Quintii, Sex. Naevi, possedisse ex edicto praetoris. In eo sponsio facta est. Ostendam primum, caussam non fuisse cur a praetore postulares ut bona P. Quintii possideres:

10. *eas in consilium;*] When the case was heard, the Judex retired to deliberate with his assessors, who in this case were three. Hortensius, says Cicero, urged him to give judgment. We see from what follows that the case had been heard before, but the advocates had never finished their speeches. Advocates will always talk more about a matter than any sensible man can see a reason for. Cicero says that the former advocate of Quintius, M. Junius, had already stated the case, put it in outline and form (informata), so that Cicero could be brief.—'faciam quod te, &c.:' see Vol. I. Divin. c. 14.

Negamus—possedisse] Here he states the issue, which was whether the property of Quintius had been possessed or not lawfully (ex edicto praetoris). All that Cicero had to prove was that Naevius had not taken possession of the property of Quintius, or that he had not taken possession in such way as the edictum required. See the Argument.

deinde, ex edicto te possidere non potuisse: postremo, non possedisse. Quaeso, C. Aquilli, vosque, qui estis in consilio, ut quid pollicitus sim diligenter memoriae mandetis. Etenim rem facilius totam accipietis, si haec memineritis; et me facile vestra existimatione revocabitis, si extra hos cancellos egredi conabor, quos mihi ipse circumdedi. Nego fuisse caussam cur postularet: nego ex edicto possidere potuisse: nego possedisse. Haec tria quum docuero, perorabo.

XI. Non fuit caussa cur postulares. Qui hoc intelligi potest? Quia Sex. Naevio neque ex societatis ratione, neque privatim quidquam debuit Quintius. Quis huic rei testis est? Idem qui acerrimus adversarius. In hac re te, te, inquam, testem, Naevi, citabo. Annum et eo diutius post mortem C. Quintii fuit in Gallia tecum simul Quintius. Doce te petiisse ab eo istam nescio quam innumerabilem pecuniam; doce aliquando mentionem fecisse, dixisse deberi: debuisse concedam. Moritur C. Quintius, qui tibi, ut ais, certis nominibus grandem pecuniam debuit. Heres ejus P. Quintius in Galliam ad te ipsum venit in agrum communem; eo denique, ubi non modo res erat, sed ratio quoque omnis et omnes litterae. Quis tam dissolutus in re familiari fuisset, quis tam negligens, quis tam tui, Sexte, dissimilis, qui, quum res ab eo quicum contraxisset recessisset et ad heredem pervenisset, non heredem quum primum vidisset certiorem faceret, appellaret, rationem afferret, si quid in controversiam veniret, aut intra parietes aut

existimatione] 'By your character, by the influence that your character has.' It is here not the opinion that a man has of others, but the opinion that others have of a man. Cicero (Pro Flacco, c. 22) describes a man as 'sine honore, sine existimatione;' and Pro Quintio, c. 15, 'dum existimatio est integra.' In fact 'existimatio' had a legal signification. It is defined (Dig. 50. 13. 5) thus: "existimatio est dignitatis illaesae status."—'cancellos:' 'limits.' See Vol. I. Verr. ii. 3. c. 59.

11. *certis nominibus*] See Vol. I. Verr. ii. 1. c. 38. 'Certis nominibus' means on certain, well ascertained, heads of account. 'Nomen,' says Passeratius correctly, is "quidquid in tabulas accepti et expensi refertur, *certains articles du conte.*" Cicero says (Verr. ii. 3. c. 58): "ex omni pecunia quam aratoribus solvere debuisti certis nominibus deductiones fieri solebant." In the Senatusconsult. Macedonianum (Dig. 14. 6. 1) it is said, "qui pecuniam ne quid amplius diceretur incertis nominibus crederet," where 'incertis nominibus' means money lent without any entry being made of the particulars. In Horace (Ep. ii. 1. v. 105) "Cautos nominibus rectis expendere nummos," 'rectis' seems to be the best MSS. reading (Macleane's Horace); but 'certis' in the sense of 'sure' would be correct also.

literae.] All the writings and accounts. See Vol. I. Verr. ii. 4. c. 16.

quicum contraxisset] The verb 'contrahere,' which contains the notion of bringing together, is the origin of the Roman word 'contractus,' as already explained. The Roman forms of expression are 'obligationes contrahuntur,' 'emptio et venditio contracta,' and so on (Gaius iii. 135, 139). But 'contractus' has a technical meaning in Roman law, and means an agreement, which is not a mere 'pactum,' but is founded on a 'caussa' and produces a 'civilis obligatio,' that is, a right of action. 'Societas' or partnership was one of these 'contractus.'

intra parietes] 'Privately, at home,' that

summo jure experiretur? Itane est? quod viri optimi faciunt, ii qui suos propinquos ac necessarios caros et honestos esse atque haberi volunt, id Sex. Naevius non faceret, qui usque eo fervet ferturque avaritia, ut de suis commodis aliquam partem nolit amittere, ne quam partem huic propinquo suo ullius ornamenti relinquat? Et is pecuniam si qua deberetur non peteret, qui, quia, quod debitum numquam est, id datum non est, non pecuniam modo, verum etiam hominis propinqui sanguinem vitamque eripere conatur? Huic tu molestus esse videlicet noluisti, quem nunc respirare libere non sinis? Quem nunc interficere nefarie cupis, eum tum pudenter appellare nolebas? Ita credo: hominem propinquum, tui observantem, virum bonum, pudentem, majorem natu, nolebas aut non audebas appellare; saepe, ut fit, quum ipse te confirmasses, quum statuisses de pecunia mentionem facere, quum paratus meditatusque venisses, homo timidus, virginali verecundia, subito ipse te retinebas; excidebat repente oratio; quum cuperes appellare, non audebas ne invitus audiret. Id erat profecto. XII. Credamus hoc, Sex. Naevium, cujus caput oppugnet, ejus auribus pepercisse. Si debuisset, Sexte, petisses statim; si non statim, paullo quidem post; si non paullo, at aliquando; sex quidem illis mensibus profecto; anno vertente sine controversia. Anno et sex mensibus vero, quum tibi quotidie potestas hominis fuisset admonendi, verbum nullum facis: biennio jam confecto fere appellas. Quis tam perditus ac profusus nepos, non adesa jam, sed abundanti etiam pecunia, sic dissolutus

is, submit it to the decision of friends, instead of coming into court. "Quum res peragi intra parietes nequisset, ventum in jus est" (Liv. iv. 9).

Itane est?] The reading of all Keller's MSS. Orelli has 'Itane?' It does not seem very material, which we take. Manutius has a good note on it. The forms are 'Itane est? itane? itane vero?' and 'itane tandem;' all which express some surprise and indignation.—'ii qui:' an emendation of Muretus. The MSS. have 'si qui;' at least all Keller's MSS. Klotz also has 'si qui.'

nolit amittere,] 'velit,' Orelli, Klotz; and many of the MSS. Some of the MSS. have 'nolit.' Some of the forms of 'nolle' and 'velle' are often confounded; and the MSS. readings will not decide which we must take. It is, says Keller, 'quaestio subtilior.' We must judge by the context. Cicero says that Naevius is so greedy that he would not choose to lose any thing, lest (by so doing) he should leave Quintius something. If we read 'velit,' then Cicero says, that Naevius is so greedy as to choose to lose something of his own in order not to leave Quintius anything; which is manifestly absurd. For in that case he would be moved by desire of vengeance, not greediness.

appellare] This is a technical meaning of 'appellare,' to call on a debtor for payment. "Et me ut sponsorem appellat" (Cic. Ad Att. i. 8.)

12. *at aliquando;*] Orelli and Klotz have 'aliquanto,' and Lambinus says that he so found it written in the MSS. But Keller says that all his MSS. have 'aliquando.' Lambinus cannot understand 'aliquando,' but probably the reader will understand it. 'If not soon, still some time,' says Cicero, and then he limits the time; 'within the six months after certainly; or at the close of the year doubtless.' As to 'illis,' see Vol. I. Verr. ii. 4. c. 18, 63.

fuisset ut fuit Sex. Naevius? Quum hominem nomino, satis mihi videor dicere. Debuit tibi C. Quintius. Numquam petisti; mortuus est ille: res ad heredem venit. Quum eum quotidie videres, post biennium denique appellas. Dubitabitur utrum sit probabilius, Sex. Naevium statim, si quid deberetur, petiturum fuisse, an ne appellaturum quidem biennio? Appellandi tempus non erat? At tecum plus annum vixit. In Gallia agi non potuit? At et in provincia jus dicebatur, et Romae judicia fiebant. Restat ut aut summa negligentia tibi obstiterit aut unica liberalitas. Si negligentiam dices, mirabimur: si bonitatem, ridebimus. Neque praeterea quid possis dicere invenio. Satis est argumenti, nihil esse debitum Naevio, quod tamdiu nihil petivit.

XIII. Quid si hoc ipsum, quod nunc facit, ostendo testimonio esse nihil deberi? Quid enim nunc agit Sex. Naevius? Qua de re controversia est? Quod est hoc judicium in quo jam biennium versamur? Quid negotii geritur in quo ille tot et tales viros defatigat? Pecuniam petit. Nunc denique? Veruntamen petat. Audiamus. De rationibus et controversiis societatis vult dijudicari. Sero. Verum aliquando tamen: concedamus. Non, inquit, id ago, C. Aquilli, neque in eo nunc laboro. Pecunia mea tot annos utitur P. Quintius. Utatur sane. Non peto. Quid igitur pugnas? An, quod saepe multis in locis dixisti, ne in civitate sit? ne locum suum, quem adhuc honestissime defendit, obtineat? ne numeretur inter vivos? decernat de vita et ornamentis suis omnibus? apud judicem caussam priore loco dicat: et eam quum orarit, tum denique vocem accusatoris audiat? Quid hoc, quo pertinet? ut ocius ad tuum pervenias? At, si id velles, jampridem actum esse poterat. Ut honestiore judicio conflictere? At sine summo scelere P. Quintium, propinquum tuum, jugulare non potes. Ut facilius judicium sit? At neque C. Aquillius de capite alterius libenter judicat, et Q. Hortensius contra caput non didicit dicere. Quid a nobis autem, C. Aquilli, refertur? Pecuniam

in provincia] The Gallia Provincia of Caesar's Gallic War, afterwards called Narbonensis. It was at this time organized as a Roman province, and justice was administered by the governor and his deputies. Klotz follows Hotmann in supposing that 'Gallia' means 'all Gallia,' to which in the answer to this supposed objection, 'provincia,' that is 'Gallia provincia,' is opposed. But this is only one of Hotmann's three opinions on the passage; and it is the wrong one. When he says 'Romae judicia fiebant,' he means that though the civil commotions disturbed Rome, the administration of justice was not interrupted.

Cicero's argument is that Naevius had no demand, because he did not make it earlier; which every body knows to be an illogical conclusion. The behaviour of Naevius proves nothing at all.

13. *ne in civitate sit? &c.*] All this is said somewhat 'oratorie,' to show the unreasonableness of Naevius in insisting on such an issue as would disgrace Quintius, if the judgment was given against him. It is the old thing said over again, till we are tired of it.

refertur?] 'What is our answer or reply?'

petit. Negamus deberi. Judicium fiat statim: non recusamus. Numquid praeterea? Si veretur ut res judicio facto parata sit, judicatum solvi satis accipiat. Quibus a me verbis satis accipiet, iisdem ipse quod peto satisdet. Actum jam potest esse, C. Aquilli: jam tu potes discedere liberatus molestia, prope dicam, non minore quam Quintius. Quid agimus, Hortensi? quid de hac conditione dicimus? Possumus aliquando depositis armis sine periculo fortunarum de re pecuniaria disceptare? possumus ita rem nostram persequi ut hominis propinqui caput incolume esse patiamur? possumus petitoris personam capere, accusatoris deponere? Immo, inquit, abs te satis accipiam: ego autem tibi non satisdabo. XIV. Quis tandem nobis ista jura tam aequa describit? quis hoc statuit, quod aequum sit in Quintium, id iniquum esse in Naevium? Quintii bona, inquit, ex edicto praetoris possessa sunt. Ergo id ut confitear postulas, ut, quod numquam factum esse judicio defendimus, id proinde quasi factum sit nostro judicio confirmemus. Inveniri ratio, C. Aquilli, non potest ut ad suum quisque quam primum sine cujusquam dedecore, infamia pernicieque perveniat? Profecto si quid deberetur peteret; non omnia judicia fieri mallet quam unum illud unde haec omnia nascuntur. Qui inter tot annos ne appellarit quidem Quintium, quum potestas esset agendi quotidie; qui, quo tempore primum male agere coepit, in vadimoniis

Numquid] Some MSS. have 'non quid,' which is clearly intended for 'numquid,' though it does not appear that any MSS. have 'numquid.' There is a reading 'ut quid,' which Klotz has; who often takes what others refuse. He should have translated this passage.—'quod peto:' this can hardly be explained; and there is little doubt that it should be 'si quid peto,' which has been conjectured before. See Orelli's note. I don't think that the objection to 'quod peto' is in the expression; but literally it would mean that Quintius had a demand against Naevius. But it may be right, and it may perhaps mean here the same as 'si quid peto,' for it seems that Cicero contended at least that Naevius might owe Quintius something, which certainly may have been the case, if they were still partners, or if the old partnership account was unsettled. See c. 23, note on 'ultro deberet.'

petitoris—accusatoris] See Vol. I. Verr. Div. c. 1. This is all oratorical, not true. The word 'persona' is explained Vol. I. Verr. ii. 2. c. 17.

14. *defendimus,*] This word here means 'maintain, affirm.' The word 'defendere' is well explained by Forcellini: the primary meaning is 'to repel.' 'Judicio' is here used two ways: 'judicio defendimus,' 'we maintain in this trial:' and 'nostro judicio confirmemus,' 'confirm by our own judgment,' by the confession implied in the act of consenting to give security (satisdare). Compare c. 9, "quin secus judicaret ipse de se." Cicero's argument is very poor. Naevius did not ask Quintius to admit that his property had been taken possession of: he said that it had, and therefore that Quintius must give security. Quintius was not compelled by the Praetor to give security: he had the 'optio,' as Cicero calls it, 'the choice' of trying the question of the 'bonorum possessio,' which he denied; and if his case was so clear as Cicero would have us believe, why should he not be content?—'proinde quasi:' 'perinde quasi,' Klotz. Keller's MSS. have 'proinde.'

unum illud] The question about the partnership, the origin of all the rest, as it seems.

agendi—male agere] This is a play on words, quite in Cicero's taste. 'Agendi' refers to proceedings at law: 'male agere'

differendis tempus omne consumpserit; qui posteaquam vadimonium quoque missum fecerit, hunc per insidias vi de agro communi dejecerit; qui, quum de re agendi nullo recusante potestas fuisset, sponsionem de probro facere maluerit; qui, quum revocetur ad id judicium, unde haec nata sunt omnia, conditionem aequissimam repudiet; fateatur se non pecuniam, sed vitam et sanguinem petere; is non hoc palam dicit: mihi si quid deberetur peterem, atque adeo jampridem abstulissem: nihil hoc tanto negotio, nihil tam invidioso judicio, nihil tam copiosa advocatione uterer, si petendum esset: extorquendum est invito atque ingratiis: quod non debet eripiendum atque exprimendum est: de fortunis omnibus P. Quintius deturbandus est: potentes, diserti, nobiles omnes advocandi sunt: adhibenda vis est veritati: minae jactentur: pericula intendantur: formidines opponantur ut his rebus aliquando victus et perterritus ipse cedat? Quae mehercule omnia, quum qui contra pugnent video et quum illum consessum considero, adesse atque impendere videntur neque vitari ullo modo posse. Quum autem ad te, C. Aquilli, oculos animumque rettuli, quo majore conatu studioque aguntur, eo leviora infirmioraque existimo. Nihil igitur debuit, ut tu ipse praedicas.

Quid si debuisset, continuone caussa fuisset cur a praetore postulares ut bona possideres? Non opinor id quidem neque jus esse neque cuiquam expedire. Quid igitur demonstrat? Vadimonium sibi ait esse desertum. XV. Antequam doceo id factum non esse, libet mihi, C. Aquilli, ex officii ratione atque ex omnium consuetudine rem ipsam et factum simul Sex. Naevii considerare. Ad vadimonium non venerat, ut ais, is quicum tibi affinitas, societas, omnes denique caussae et necessitudines veteres intercedebant. Illicone ad praetorem ire convenit? continuone verum fuit

to his alleged fraudulent conduct.—'sponsionem de probro:' here he is again on the old subject. It was not a 'sponsio de probro,' but a 'sponsio' about the fact of possession.—'adeo:' Vol. I. Divin. c. 21.

consessum] He means the advocates and friends of Naevius, who were seated together on the 'subsellia.' Compare 'a praeconum consessu' (c. 4). 'Consessus,' a 'sitting together,' also means any number of persons sitting together, 'a company or society.' "Ut primum judices consederunt, valde diffidere boni coeperunt: non enim unquam turpior in ludo talario consessus fuit" (Cic. Ad Att. i. 16).

Vadimonium—desertum] Cicero has tried to prove that Quintius owed Naevius nothing. But if that were so, there still remained a ground for seizing his property; and this ground is, that Quintius, as Naevius alleged, had not made an appearance when he ought to have done.

15. *verum*] Manutius correctly explains it by 'aequum,' 'right,' 'just.' Cicero (Ad Att. ii. 1) says, "quid verius quam in judicium venire qui ob rem judicandam pecuniam acceperit." See Caesar, B. G. iv. 8, and Horace, Sat. ii. 3. v. 312; Ep. i. 7. v. 98.—'usu venire:' 'to happen,' 'to come in the way of experience of life.' "Quod haec de Vercingetorige usu ventura opinione praeceperat" (Caesar, B. G. vii. 9). Cicero (Cat. Maj. c. 3) has 'usu venirent;' and Terence (Phorm. 1. 2, 24), 'mi usus venit.'

postulare ut ex edicto bona possidere liceret? ad haec extrema et inimicissima jura tam cupide decurrebas, ut tibi nihil in posterum quod gravius atque crudelius facere posses reservares? Nam quid homini potest turpius, quid viro miserius aut acerbius usu venire? quod tantum evenire dedecus, quae tanta calamitas inveniri potest? Pecuniam si cuipiam fortuna ademit, aut si alicujus eripuit injuria, tamen, dum existimatio est integra, facile consolatur honestas egestatem. At non nemo aut ignominia affectus aut judicio turpi convictus bonis quidem suis utitur; alterius opes, id quod miserrimum est, non exspectat: hoc tamen in miseriis adjumento et solatio sublevatur. Cujus vero bona venierunt; cujus non modo illae amplissimae fortunae, sed etiam victus vestitusque necessarius sub praecone cum dedecore subjectus est; is non modo ex numero vivorum exturbatur, sed, si fieri potest, infra etiam mortuos

There is a reading 'quid vero miserius,' the reading of all Keller's MSS.; but it is a mistake.

ignominia—judicio turpi] A 'judicium turpe' is a trial in which 'infamia' is the consequence of an adverse judgment, as in the actions 'pro socio, tutelae, mandati, depositi,' as we learn from the Edict, and from Cicero (Pro Roscio Com. c. 6; Pro Roscio Amer. c. 38, 39; Pro Caecina, c. 2; Pro Cluentio, c. 42, "turpi judicio damnati in perpetuum omni honore ac dignitate privantur"). Insolvency also in all cases was followed by 'infamia,' when a man's property was taken possession of, put up to sale, sold ('bona possessa, proscripta, vendita:' Tab. Heracl. lin. 113—117; Gaius ii. 154). Every thing, it appears, was sold, even to a man's clothes, those that were not necessary to cover him, we must suppose; for it is not possible that they should have sold the clothes on a man's back, or stripped his wife and children naked. The old law of bankruptcy in England was mainly directed against fraudulent bankrupts, and they were treated as criminals. In fact fraud was considered an element in the description of bankruptcy; but this is not so now. All a bankrupt's property becomes the property of his assignees for the benefit of his creditors; but the English law does not deal so hardly with him as Cicero represents the case of insolvency at Rome. But the English law makes a distinction between the insolvency of traders, who alone can have the advantage, for such it is, of being made bankrupts, and those insolvents who are not traders, and who are dealt with according to another rule. In cases of insolvency the law, releasing the debtor from prison, secures his person from liability for debts contracted before his discharge, but all his present and future property must be disposed of for the benefit of his creditors. The wearing apparel, bedding, and other necessaries of the insolvent and his family are excepted from seizure, and the working tools and implements, not exceeding in the whole the value of 20*l*.

Cicero (Pro Rosc. Com. c. 6) says of three actions which had 'infamia' as their consequence, 'fiduciae, tutelae, societatis,' that they are 'summae existimationis et paene dicam capitis.' In this oration (Pro Quintio, cc. 8, 9, 13, 22) he calls this question of the seizure of Quintius' property 'capitis caussa,' and in c. 15 he designates the consequence of a judgment against Quintius as 'infamia,' though he does not use that word in this chapter, nor in any other part of the speech; but it is a plain conclusion that if judgment was given against Quintius in this action, the result was 'infamia.' Savigny (System, &c. ii. 198) shows that "Infamia was nothing else than the loss of political rights, though citizenship was still retained. The Infamis consequently became Aerarius; he lost his vote, and the capacity of obtaining the offices of the state (suffragium et honores)." It was accordingly a 'capitis deminutio;' and is thus defined by Savigny: "The Infamis is a Roman who in consequence of a general rule (not in consequence of the censors' arbitrary pleasure) retains his Civitas, but has lost the political rights that belong to it."

ex numero vivorum] Orelli has 'ex numero virorum,' which is merely a typographical error, derived, it is said, from Beck's edition.—'etenim mors honesta, &c.:' none

amandatur. Etenim mors honesta saepe vitam quoque turpem exornat: vita turpis ne morti quidem honestae locum relinquit. Ergo hercule, cujus bona ex edicto possidentur, hujus omnis fama et existimatio cum bonis simul possidetur; de quo libelli in celeberrimis locis proponuntur, huic ne perire quidem tacite obscureque conceditur; cui magistri fiunt et domini constituuntur, qui qua lege et qua conditione pereat pronuntient; de quo homine praeconis vox praedicat, et pretium conficit; huic acerbissimum vivo videntique funus ducitur: si funus id habendum sit, quo non amici conveniunt ad exsequias cohonestandas, sed bonorum emptores, ut carnifices, ad reliquias vitae lacerandas et distrahendas. XVI. Itaque majores nostri raro id accidere voluerunt; praetores ut considerate fieret comparaverunt; viri boni, quum palam fraudantur, quum experiundi potestas non est, timide tamen et pedetentim istuc descendunt, vi ac necessitate coacti, inviti, multis vadimoniis desertis saepe illusi ac destituti. Considerant enim quid et quantum sit alterius bona proscribere. Jugulare civem ne jure quidem quisquam bonus vult: mavult enim commemorare se, quum posset perdere, pepercisse, quam quum parcere potuerit perdidisse. Haec in homines alienissimos, denique inimicissimos viri boni faciunt et hominum existimationis et communis humanitatis caussa; ut, quum ipsi nihil alteri scientes incommodarint, nihil ipsis jure incommodi cadere possit. Ad vadimonium non venit. Quis? Propinquus. Si res ista gravissima sua sponte videretur, tamen ejus atrocitas necessitudinis nomine levaretur. Ad vadimonium non venit. Quis? Socius. Etiam gravius aliquid

of the critics are satisfied with this passage, and each has his emendation to propose. Klotz inserts 'non,' and writes 'vitam quoque non turpem exornat,' which Keller would prefer to any of the emendations, if we are to have one. It is however one of the worst, and is pure nonsense. There is no difficulty in seeing what Cicero says. Whether it is said well or ill, is another matter. I suppose that he could talk and write a little idly sometimes, like other people; particularly when he was a young man.

magistri] The 'magister' is one of the creditors who has the management of the sale of the insolvent's property. The word 'domini' means, I suppose, that the creditors exercise the dominium over the property, they sell as owners, though they are not owners. "Una agebant ceteri creditores in quibus erat Lucullus et P. Scipio et is quem putabant magistrum fore si bona venirent, L. Pontius" (Cic. Ad Attic. i. 1). As to the title which the purchaser acquired at an auction made under legal process, see Gaius (iii. § 80; iv. § 35). He only got the Bonitarian ownership or equitable title. He got his legal title by 'usucapio.'

16. *experiundi, &c.*] When they cannot proceed against him in the usual form (in jus vocare), because he is hiding himself. 'In jus vocare est juris experiundi caussa vocare' (Paulus, Dig. 2. 4. 1).

Quis? Socius.] Here he calls them partners; but the words which follow make it doubtful, if he considered them as partners only because Naevius and C. Quintius had been partners, which circumstance alone did not make P. Quintius and Naevius partners; or partners in consequence of their having acted and dealt as partners after the death of C. Quintius. All through this oration the facts are left in a perplexed

ei deberes concedere, quicum te aut voluntas congregasset aut fortuna conjunxisset. Ad vadimonium non venit. Quis? Is qui tibi praesto semper fuit. Ergo in eum, qui semel hoc commisit ut tibi praesto non esset, omnia tela conjecisti, quae parata sunt in eos qui permulta male agendi caussa fraudandique fecerunt? Si dupondius tuus ageretur, Sex. Naevi, si in parvula re captionis aliquid vererere, non statim ad C. Aquillium aut ad eorum aliquem qui consuluntur concurrisses? Quum jus amicitiae, societatis, affinitatis ageretur; quum officii rationem atque existimationis duci conveniret; eo tempore tu non modo ad C. Aquillium aut L. Lucilium, sed ne ipse quidem ad te rettulisti; ne haec quidem tecum locutus es? Horae duae fuerunt; Quintius ad vadimonium non venit. Quid ago? Si mehercule haec tecum duo verba fecisses: Quid ago? respirasset cupiditas atque avaritia paullulum: aliquid loci rationi et consilio dedisses: tu te collegisses: non in eam turpitudinem venisses ut hoc tibi esset apud tales viros confitendum, qua tibi vadimonium non sit obitum, eadem te hora consilium cepisse hominis propinqui fortunas funditus evertere. XVII. Ego pro te nunc hos consulo, post tempus et in aliena re, quoniam tu in tua re quum tempus erat consulere oblitus es. Quaero abs te, C. Aquilli, L. Lucili, P. Quintili, M. Marcelle; vadimonium mihi

state; and probably purposely. Cicero calls P. Quintius 'socius,' in order to use it for his argument here.

Si dupondius tuus] This is the true reading. The old reading was 'si de praediis tuis.' If a 'dupondius,' a couple of ases, were in danger, Naevius would have applied for advice to C. Aquillius or some other juriconsultus (qui consuluntur). 'Captionis aliquid' is any loss, a meaning which seems to be connected with the meaning of 'captus' in such expressions as 'mente captus.'

L. Lucilium] Orelli has 'L. Lucilium.' The name is L. Lucullum in some MSS. and editions. Lucilius was a jurisconsultus and one of the teachers of Ser. Sulpicius. L. Lucullus was not a jurisconsultus. We may infer from Cicero (Brutus, c. 42) that Lucilius is the true name, for he mentions Lucilius and Gallus together: "cumque discendi caussa duobus peritissimis operam dedisset, L. Lucilio Balbo et C. Aquillio Gallo." Orelli has 'non modo non,' which is followed by 'ne quidem.' Keller rightly observes that Beck, who edited 'non modo' without the 'non,' was supported by the usage of the Latin writers rather than by the MSS. But the 'non' ought to be omitted. See Vol. I. Excursus on 'Non modo.'

This passage stands thus in Orelli: "non modo non ad C. Aquillium aut ad L. Lucilium rettulisti, sed ne ipse quidem te consuluisti;" which reading is derived from Peyron's Turin Palimpsest, and is perhaps the best. See Orelli's note; but I have let it stand as it is in the Variorum edition; for it is very possible that 'consuluisti' is an interpretation of 'rettulisti,' as Gruter supposed; and the words 'sed ne ipse quidem te consuluisti' are not in all the MSS. Klotz, in his Preface (p. 60) contends that the Palimpsest is right, that 'non modo non' is the true reading; as appropriate, he says, as his own reading, 'vitam quoque non turpem,' in another passage.

Quid ago?] A familiar expression when a man asks for advice, or as in this passage, when he deliberates. "Videtis quo in loco res sit; quid ago? dic, Hegio" (Terence, Phorm. ii. 4. 6).

consilium—evertere.] This is not the only instance in Cicero of 'consilium' followed by an infinitive. Hotmann quotes two other examples.

17. *vadimonium non obiit*] This use of 'obire' is like many others, where there is a

non obiit quidam socius et affinis meus, quicum mihi necessitudo vetus, controversia de re pecuniaria recens intercedit. Postulone a praetore ut ejus bona mihi possidere liceat, an, quum Romae domus ejus, uxor, liberi sint, domum potius denuntiem? Quid est quod hac tandem de re vobis possit videri? Profecto si recte vestram bonitatem atque prudentiam cognovi, non multum me fallit, si consulamini, quid sitis responsuri: primum, exspectare; deinde, si latitare ac diutius ludificare videatur, amicos convenire; quaerere quis procurator sit: domum denuntiare. Dici vix potest quam multa sint quae respondeatis ante fieri oportere quam ad hanc rationem extremam necessariam devenire. Quid ad haec Naevius? Ridet scilicet nostram amentiam, qui in vita sua rationem summi officii desideremus et instituta bonorum virorum requiramus. Quid mihi, inquit, cum ista summa sanctimonia ac diligentia? Viderint, inquit, ista officia viri boni: de me autem ita considerent; non, quid habeam, sed quibus rebus invenerim, quaerant; et quemadmodum natus et quo pacto educatus sim. Memini. Vetus est: *De scurra multo facilius divitem quam patremfamilias fieri posse.* Haec ille, si verbis non audet, re quidem vera palam loquitur. Etenim si vult virorum bonorum instituto vivere, multa oportet discat atque dediscat; quorum illi aetati utrumque difficile est. XVIII. Non dubitavi, inquit, quum vadimonium desertum esset, bona proscribere. Improbe: verum, quoniam tu id tibi arrogas et concedi postulas, concedamus. Quid, si numquam deseruit? si ista caussa abs te tota per summam fraudem et malitiam ficta est? si vadimonium omnino tibi cum P. Quintio nullum fuit? quo te nomine appellemus? Improbum? At etiam si desertum vadimonium esset, tamen in ista postulatione et proscriptione bonorum improbissimus reperiebare. Malitiosum? non negas. Fraudulentum? jam id quidem arrogas tibi et praeclarum putas. Audacem? cupidum? perfidiosum? Vulgaria et obsoleta sunt; res autem nova atque

notion of going, and an object or end to go to and reach. In Pliny's Letters (viii. 12) there is 'obeunti ad vadimonia,' though one MS. is said to omit the 'ad,' and some critics think that it is scarcely Latin. Yet 'obire ad' occurs also in Livy (x. 25).

domum—denuntiem?] This means to leave a notice at the house. "Praetor ait: Dum ei qui aberit prius domum denuntiari jubeam" (Ulp. Dig. 39. 2. 4. § 5).

extremam necessariam] There is good authority for 'necessariam.' Perhaps the conjunction has dropped out.

Vetus est:] 'It is an old saying.' Orelli writes, 'Vetus est de scurra: Multo facilius,' &c., which is a bad punctuation.

18. *malitiam*] See Vol. I. Verr. Act. Pr. c. 11.

Malitiosum? non negas.] 'Num malitiosum? non negas,' some editions. It does not appear that 'non' is in the MSS. It was added by Lambinus. Thirteen of Keller's MSS. have 'non malitiosum negas?' and Orelli says that many MSS. have 'non' for 'num.' 'Non malitiosum negas?' can hardly be right. It seems that the 'non' has merely changed its place.

inaudita. Quid ergo est? Vereor mehercule ne aut gravioribus utar verbis quam natura fert, aut levioribus quam caussa postulat. Ais esse vadimonium desertum. Quaesivit a te statim ut Romam rediit Quintius, quo die vadimonium istuc factum esse diceres. Respondisti statim: Nonis Febr. Discedens in memoriam rediit Quintius quo die Roma in Galliam profectus sit: ad ephemeridem revertitur: invenitur dies profectionis, prid. Kal. Feb. Nonis Feb. si Romae fuit, caussae nihil dicimus quin tibi vadimonium promiserit. Quid, hoc inveniri qui potest? Profectus est una L. Albius, homo cum primis honestus. Dicet testimonium. Prosecuti sunt familiares et Albium et Quintium. Dicent hi quoque testimonium. Litterae P. Quintii, testes tot, quibus omnibus caussa justissima est cur scire potuerint, nulla cur mentiantur, cum astipulatore tuo comparabuntur. Et in hac ejusmodi caussa P. Quintius laborabit, et diutius in tanto metu miser periculoque versabitur, et vehementius eum gratia adversarii perterrebit quam fides judicis consolabitur? Vixit enim semper inculte atque horride; natura

in memoriam rediit] See Vol. I. Verr. ii. 1. c. 46.

ephemeridem] A journal or memorandum-book. The Latin word is 'diarium.' "Quum vero non per annos, sed per singulos dies res gestae scribuntur, ea historia Graeco vocabulo ἐφημερίς dicitur, cujus interpretamentum scriptum est in libro Sempronii Asellionis primo" (Gell. v. 18). Propertius (iii. 23) explains the word in the sense in which Cicero uses it:

"Me miserum! his aliquis rationem scribit avarus,
Et ponit duras inter ephemeridas."

The 'litterae P. Quintii' are the 'ephemerides,' as Manutius explains it.

prid. Kal. Feb.] In c. 6, the day is 'ante diem iv Kalend. Febr.' The same day is meant, and there is an error in one of the passages.

astipulatore tuo, &c.] 'Shall be compared, matched with, set off in evidence against your astipulator.' Manutius and others take 'astipulator' in this passage to mean a witness to the 'vadimonium.' But it may be used in its proper sense, which is explained by Gaius (iii. 110): "Possumus tamen ad id quod stipulamur, alium adhibere qui idem stipuletur: quem vulgo adstipulatorem vocamus. Sed huic proinde actio competit, proindeque ei recte solvitur ac nobis; sed quidquid consecutus erit, mandati judicio nobis restituere cogetur." The stipulator who addressed the words 'dari spondes?' to the sponsor, to him who had to reply 'spondeo,' could also in some cases employ another person to make the same 'stipulatio,' the consequence of which was that the person who said 'spondeo' was bound to both, and each had a right of action. Puchta observes (Instit. iii. § 264): "the creditor could make that which he had stipulated for the subject of a stipulation also for another, and thus give him the same right that he had himself, so that he could enforce the demand, and give to his principal what he had recovered, if the principal should be prevented in any way from prosecuting his demand." Gaius observes (iii. 117) that an 'astipulator' was generally (fere) only employed when the 'stipulatio' was that something should be paid after the stipulator's death, in which case the adstipulator had a right of action, and was bound to pay to the heres of the stipulator what he had recovered. [Orelli, Klotz, and others, place a note of interrogation after 'comparabuntur;' Garatoni and others do not; and I think they do right.]

Vixit enim] The word 'enim' refers to 'gratia.' P. Quintius lived a retired life, and made no acquaintances. The 'solarium' seems to be the sun-dial in the Forum, which was a place of common resort, but not for Quintius. He did not frequent the Forum, or the Campus Martius, or go to entertainments. Censorinus (De Die Natal. c. 23) says it is not certain in what part of Rome a time-keeper was first placed. He adds: "Illud satis con-

tristi ac recondita fuit: non ad solarium, non in campo, non in conviviis versatus est: id egit ut amicos observantia, rem parsimonia retineret. Antiquam officii rationem dilexit, cujus splendor omnis his moribus obsolevit. At si in caussa pari discedere inferior videretur, tamen esset non mediocriter conquerendum; nunc in caussa superiore ne ut par quidem sit postulat; inferiorem esse se patitur, dumtaxat usque eo ne cum bonis, fama, fortunisque omnibus Sex. Naevii cupiditati crudelitatique dedatur.

XIX. Docui, quod primum pollicitus sum, C. Aquilli, caussam omnino cur postularet non fuisse; quod neque pecunia debebatur et, si maxime deberetur, commissum nihil esset quare ad istam rationem perveniretur. Attende nunc ex edicto praetoris bona P. Quintii possideri nullo modo potuisse. Recita edictum: QUI FRAUDATIONIS CAUSSA LATITARIT. Non est is Quintius: nisi si latitant, qui ad negotium suum relicto procuratore proficiscuntur. CUI HERES NON EXSTABIT. Ne is quidem. QUI EXSILII CAUSSA SOLUM VERTERIT. Quo tempore existimas oportuisse, Naevi, absentem Quintium defendi aut quomodo? Tum quum postulabas ut bona possideres.—Nemo adfuit. Neque enim quisquam divinare

stat, nullum in foro prius fuisse quam id quod M. Valerius ex Sicilia advectum ad rostra in columna posuit. Quod cum ad clima Siciliae descriptum ad horas Romae non conveniret, L. Philippus censor aliud juxta constituit." Pliny (H. N. vii. 60) speaks of a 'horologium' placed under a covering by Scipio Nasica, who "primus aqua divisit horas aeque noctium ac dierum." The Romans measured time both by dials and the flow of water (Cicero De Nat. Deor. ii. 34). Both kinds of timekeepers were called 'solarium.'

At si in, &c.] It is very difficult to see any meaning in this sentence; not difficult to see what the words mean, but what argument there is. There are several idle sentences in this oration, such as Cicero would not have written when he was older. There is something of the same kind in c. 30.

19. *commissum nihil esset*] Twelve of Keller's MSS. have 'commissum nihil esse.'

Qui fraudationis caussa] See Vol. I. Verr. ii. 2. c. 24, and Pro Quintio, c. 23. The title of the Digest, 42. 4, "Quibus ex caussis in possessionem eatur," contains the rules of law applicable to the 'missio in possessionem.' Why it should be done, if no person appeared as heres, that is, as the representative of the deceased, will appear from the following passage (Dig. 42. 4. 8, 9. Ulpian): "Si diu incertum sit, heres exstiturus necne sit, caussa cognita permitti oportebit bona rei servandae caussa possideri. Et si ita res urgeat vel conditio bonorum, etiam hoc erit concedendum ut curator constituatur unus ex creditoribus." In such a case it was necessary to secure the property, both for the benefit of the heres, co-heredes, and of the creditors.

nisi si] So in all the MSS., as Gruter says. Keller cites three Paris MSS. in which there is only 'nisi.'—'qui . . . verterit.' Hotmann and Lambinus both say that they found something else after 'verterit,' Hotmann 'in a very old MS.,' and Lambinus 'in the MSS.' But they do not exactly agree about the words. Lambinus writes 'verterit. Dici hoc de P. Quinctio non potest. QUI ABSENS JUDICIO DEFENSUS NON FUERIT. Ne is quidem. Quo tempore,' &c. The addition of these words makes what follows clearer, 'absentem Quintium defendi,' &c.; but Keller says that there is no trace of a lacuna here in any of the Paris MSS. Klotz has introduced these words into his text with two small variations. It is very likely, as Gruter thinks, that neither Hotmann nor Lambinus tells the truth.—'Quum proscribebas:' the critics can't agree whether there should be a note of interrogation after 'proscribebas' or not. They must be reconciled by being told that it is quite immaterial.

poterat te postulaturum; neque quemquam attinebat id recusare, quod praetor, non fieri, sed ex edicto suo fieri jubebat. Qui locus igitur absentis defendendi procuratori primus datus est? Quum proscribebas.—Ergo adfuit: non passus est: libellos dejecit Sex. Alfenus. Qui primus erat officii gradus servatus est a procuratore summa cum diligentia. Videamus quae deinde sint consecuta. Hominem P. Quintii deprehendis in publico: conaris abducere. Non patitur Alfenus: vi tibi adimit: curat ut domum reducatur ad Quintium. Hic quoque summe constat procuratoris diligentis officium. Debere tibi dicis Quintium; procurator negat. Vadari vis: promittit. In jus vocas: sequitur. Judicium postulas: non recusat. Quid aliud sit absentem defendi ego non intelligo. At quis erat procurator? Credo aliquem ejectum hominem, egentem, litigiosum, improbum, qui posset scurrae divitis quotidianum convicium sustinere. Nihil minus. Eques Romanus locuples, sui negotii bene gerens: denique is quem, quoties Naevius in Galliam profectus est, procuratorem Romae reliquit. XX. Et audes, Sex. Naevi, negare absentem defensum esse Quintium, quum eum defenderit idem qui te solebat? et, quum is judicium acciperet pro Quintio, cui tu et rem et famam tuam commendare proficiscens et concredere solebas, conaris hoc dicere, neminem exstitisse qui Quintium judicio defenderet? Postulabam, inquit, ut satisdaretur. Injuria postulabas: ita videbare. Recusabat

Hominem] A slave of Quintius.

Vadari] See Vol. I. Verr. ii. 3. c. 15. —'sui negotii bene gerens.' 'Bene rem gerere' is 'to manage one's affairs well, to be in good circumstances.' This is an instance, as they call it, of participles assuming the construction of nouns.

20. *judicium acciperet*] As to the expression 'judicium accipere,' see Vol. I. Verr. ii. 2. c. 24. I have followed Keller in writing 'acciperet' instead of 'acceperit,' for which he gives sufficient reasons. His note is an evidence of most singular diligence on a matter which seems trifling, but really is not so. 'Acceperit' would mean that Alfenus had accepted, which is not true. 'Acciperet' means that he was ready to accept, which is the fact. We have an example of this imperfect which he cites from c. 21: "Bruti erat familiaris: itaque is intercedebat." He was ready 'intercedere,' but he did not (c. 20): "intercessurum se dixit palam, nisi quid," &c. Keller cites another example: "Quid Aviti morte Scamander consequebatur" (Pro Cluentio, c. 22). The Berne MS., and all the thirteen Paris MSS. have 'acciperet,' except one. Keller was curious to trace the origin of the reading 'acceperit,' which has so completely displaced 'acciperet' that it is not even mentioned among the various readings. The oldest editions, Rome, 1472, and others have 'acciperet.' 'Acceperit' first appears in Lambinus' edition, Paris, 1566. Orelli and Klotz have 'acceperit.'

satisdaretur.] There is also the reading 'satisdarent' in ten Paris MSS., and 'satisdaret' in the Berne MS. and one of the Paris MSS.

ita videbare.] This is the MSS. reading, which Hotmann changed to 'ita jubebare,' which nobody yet has been able to explain, though nearly every body has followed him except Klotz. I agree with Keller that 'ita videbare' can be understood, and that 'ita jubebare' has no meaning. Cicero says: "You made your claim wrongfully; so you seemed (at least): Alfenus refused.—Yes, replied Naevius, but the praetor decided that he must give security.—This was the reason then, rejoins Cicero, that the tribuni were appealed to.—Here, says Naevius, I have you fast; it is not submitting

Alfenus. Ita: verum praetor decernebat. Tribuni igitur appellabantur. Hic te, inquit, teneo. Non est istud judicium pati, neque judicio defendere, quum auxilium a tribunis petas. Hoc ego, quum attendo qua prudentia sit Hortensius, dicturum esse eum non arbitror. Quum autem antea dixisse audio et caussam ipsam considero, quid aliud dicere possit non reperio. Fatetur enim libellos Alfenum dejecisse, vadimonium promisisse, judicium quin acciperet in ea ipsa verba, quae Naevius edebat, non recusasse; ita tamen more et instituto per eum magistratum qui auxilii caussa constitutus est. Aut haec facta non sint necesse est, aut C. Aquillius, talis vir, juratus hoc jus in civitate constituat: cujus procurator non recusarit omnia judicia, quae quisque in verba postularit; cujus procurator a praetore tribunos appellare ausus sit; eum non defendi, ejus bona recte possideri posse, ei misero, absenti, ignaro fortunarum suarum, omnia vitae ornamenta per summum dedecus et ignominiam deripi convenire. Quod si probari nemini potest, illud certe probari omnibus necesse est, defensum esse judicio absentem Quintium. Quod quum ita est, ex edicto bona possessa non sunt. At enim tribuni plebis ne audierunt quidem. Fateor, si ita est, procuratorem decreto praetoris oportuisse parere. Quid, si M. Brutus intercessurum se dixit palam, nisi quid inter ipsum

to a judicium nor defending in a judicium when you apply to the tribunes for their protection."

judicium pati,] All the Paris MSS. omit 'judicium;' but they are all wrong. See Vol. I. Verr. ii. 2. c. 24.

ita tamen] Most of the editors suppose there is something wrong here, and place a few asterisks before 'ita.' Lambinus had the audacity to insert the words 'cum satisdare a praetore juberetur, recusasse,' before 'ita tamen,' which is a good warning to those who would trust this editor. (See Vol. I. Verr. ii. 1. c. 31.) Lambinus justifies what he did by showing that he completely misunderstood his author. Alfenus did not refuse, he could not refuse; but he could appeal against the order to give security. So Cicero says, "he did not refuse; yet however he resisted so far as to profess his readiness to give security according to custom and established law, if required by the magistrates to whom he appealed on this point." Manutius understood it right; and Keller nearly so. If we can trust this passage, we know what the appeal to the tribuni was about. (See c. 7, note on 'judicatum solvi.') But we may always doubt about giving our confidence to the statements of the advocate.

ignaro—fortunarum] Hotmann added 'omnia,' and the text stands thus in Orelli, 'absenti, ignaro, omnia fortunarum suarum.' Manutius explains the text right: "qui quid in suis rebus ageretur, absens nesciret." Hotmann says that he found his 'omnia' in a very old MS. There is little doubt that he is lying. Nobody else has found it. Compare 'nisi fortunas suas accusare velint' (Pro Sext. Ros. Amer.); and 'ignarum casus sui' (Id. c. 35).

quum ita est,] 'quum ita sit: Pe (sec. m.), 1'; Keller: and this ought to be the reading.—'At enim tribuni,' &c.: this is the supposed objection of the advocates of Naevius.

Quid, si M. Brutus] Manutius supposes him to be the father of M. Brutus, one of the assassins of Caesar; and there is little doubt about it. This M. Brutus belonged to the faction of Marius, and was put to death by Cn. Pompeius (B.C. 77) in Cisalpine Gallia. He was 'tribunus plebis' B.C. 83, in the consulship of L. Cornelius Scipio and C. Norbanus, when the faction of Marius had the power.

Cicero answers the objection of Naevius' advocates very incompletely. The tribunes did not reverse the praetor's order. All that Cicero can say is this: "Well, if M.

Alfenum et Naevium conveniret, videturne intercessisse appellatio tribunorum non morae, sed auxilii caussa? XXI. Quid deinde fit? Alfenus, ut omnes intelligere possent judicio defendi Quintium, ne qua subesse posset aliena aut ipsius officio aut hujus existimatione suspicio, viros bonos complures advocat, testatur isto audiente se pro communi necessitudine id primum petere, ne quid atrocius in P. Quintium absentem sine caussa facere conetur; sin autem inimicissime atque infestissime contendere perseveret, se paratum esse omni recta atque honesta ratione defendere, quod petat non deberi: se judicium id quod edat accipere. Ejus rei conditionisque tabellas obsignaverunt viri boni complures. Res in dubium venire non potest. Fit rebus omnibus integris, neque proscriptis neque possessis bonis, ut Alfenus promittat Naevio sisti Quintium. Venit ad vadimonium Quintius. Jacet res in controversiis isto calumniante biennium, usque dum inveniretur qua ratione res ab usitata consuetudine recederet et in hoc singulare judicium caussa omnis concluderetur. Quod officium, C. Aquilli, commemorari procuratoris potest quod ab Alfeno praeteritum esse videatur? Quid affertur quare P. Quintius negetur absens esse defensus? An vero id quod Hortensium, quia nuper injecit et quia Naevius semper id clamitat, dicturum arbitror, non fuisse Naevio parem certationem cum Alfeno illo tempore, illis dominantibus? Quod si velim confiteri, illud, opinor, concedent non procuratorem

Brutus said openly that he would use his tribunitian authority, if some arrangement was not made between Alfenus and Naevius, does not the appeal to the tribunes appear to have resulted in an 'intercessio,' not for the purpose of causing delay, but for the purpose of giving protection ('auxilium')?" But the argument of Naevius' advocates was that the matter was only delayed, the order of the praetor was not reversed. Therefore the tribuni did not make any change at all. They only gave time.

There is a reading 'morte' in place of 'morae,' and also a reading 'more,' which Hotmann defended, a fact so curious as to be worth recording.

I have translated 'videturne' 'does not the appeal, &c.' Lambinus has a good note on it. He says that 'ne' here requires an affirmative answer, as in Terence (Andria, Prolog. 17):

"Faciuntne intelligendo ut nihil intelligant?"

which is perhaps the better reading.

21. *judicium—edat*] 'Judicium accipere' corresponds to 'judicium edere;' and 'judicium edere' is the same as 'actionem edere;' and 'actionem edere' is explained thus (Dig. 2. 13, de Edendo): it is to give the defendant notice in some way what the form of action is that the plaintiff intends to use.

rebus omnibus integris,] This is explained by the words which immediately follow. Here Cicero states that Alfenus, pursuant to the order of the tribuni, promised that Quintius should appear, and made the promise before the property was 'possessa' or 'proscripta.' He could affirm this as to possession, for he denies that it ever was 'possessa;' and as to the 'proscripta,' I suppose he denies it because Alfenus pulled down the 'libelli' (c. 6). But if the 'libelli' were put up, the property was 'proscripta.' A careful examination of this oration will show that Cicero's statements are very loose.—'calumniante:' see Vol. I. Verr. ii. 1. c. 10.—'concluderetur:' 'that the whole case should be comprised within the terms of this unusual form of trial.' So Cicero says (Pro Rosc. Com. c 5): "concludi in angustissimam sponsionis formulam."

illis dominantibus?] The party of Marius, which is again alluded to in the words 'illarum partium.'

P. Quintii neminem fuisse, sed gratiosum fuisse. Mihi autem ad vincendum satis est fuisse procuratorem quicum experiri posset. Qualis is fuerit, si modo absentem defendebat per jus et per magistratum, nihil ad rem arbitror pertinere. Erat enim, inquit, illarum partium. Quidni, qui apud te esset educatus, quem tu a puero sic instituisses ut nobili ne gladiatori quidem faveret. Si, quod tu semper summe concupisti, idem volebat Alfenus, ea re tibi cum eo par contentio non erat? Bruti, inquit, erat familiaris; itaque is intercedebat. Tu contra Burrieni, qui injuriam decernebat; omnium denique illorum, qui tum et poterant per vim et scelus plurimum, et, quod poterant, id audebant. An omnes tu istos vincere volebas, qui nunc tu ut vincas tanto opere laborant? Aude id dicere; non palam, sed his ipsis quos advocasti. Tametsi nolo eam rem commemorando renovare, cujus omnino rei memoriam omnem tolli funditus ac deleri arbitror oportere. XXII. Unum illud dico: si propter partium studium potens erat Alfenus, potentissimus Naevius: si fretus gratia postulabat aliquid iniquius Alfenus, multo iniquiora Naevius impetrabat. Neque enim inter studium vestrum quidquam, ut opinor, interfuit. Ingenio, vetustate, artificio tu facile vicisti. Ut alia omittam, hoc satis est. Alfenus cum iis et propter eos periit quos diligebat: tu, postquam qui tibi erant amici non poterant vincere, ut amici tibi essent qui vincebant effecisti. Quod si tum par tibi jus cum Alfeno fuisse non putas, quia tamen aliquem contra te advocare poterat; quia magistratus aliquis reperiebatur apud quem Alfeni caussa consisteret, quid hoc tempore Quintio statuendum est? cui neque magis-

Erat enim,] See Vol. I. Verr. ii. 1. c. 9. —'educatus:' the Turin Palimpsest has 'eductus.'

faveret. Si, quod tu, &c.] This is a difficult passage, and the text is uncertain. I have followed Orelli, who has restored this passage according to the Turin Palimpsest, except that it has 'cupisti.' In place of 'faveret' the common reading is 'cederet.' Cicero means to represent Alfenus and Naevius as hostile to the party of the 'nobiles,' to Sulla's faction; and there is some allusion in the word 'gladiatori' which we do not understand. It is explained by Menard and Manutius that 'nobiles' is used in a double sense, to signify a 'noble,' and one who is distinguished or known; so that Alfenus hated a 'nobilis' so much that he hated even a 'nobilis gladiator.' Klotz, who has 'faveret' in his text, explains 'cederet' in his note, and says nothing of 'faveret.' He explains 'cederet' thus: 'that he would not make way for any noble, not even for a gladiator;' and he adds that one generally makes way for such people, because their bodily strength enables them to make way for themselves, if they choose.

istos—volebas,] The Berne MS. and some of the Paris MSS. have 'istos—nolebas,' and Hotmann would read 'nolebas,' but he mistook the sense. The 'istos' are the Sullani, as Manutius says. Naevius had changed sides (c. 22): he was once on the Marian side, now on the side of Sulla, because it was victorious. Cicero says to him: "Did you wish (at that time) all those friends of yours to get the victory, who are now working so hard that you may get the victory? Dare to say this; not openly, but to these men here whom you have called to your assistance."

22. *vetustate,*] This means 'cunning.' 'Veterator' is a cunning knave, an 'old hand,' as we say.

tratus adhuc aequus inventus est, neque judicium redditum est usitatum; non conditio, non sponsio, non denique ulla umquam intercessit postulatio, mitto aequa, verum ante hoc tempus ne fando quidem audita. De re pecuniaria cupio contendere. Non licet. At ea controversia est. Nihil ad me attinet; caussam capitis dicas oportet. Accusa ubi ita necesse est. Non, inquit, nisi tu ante novo modo priore loco dixeris. Dicendum necessario est: praestituendae horae ad arbitrium nostrum: judex ipse arcebitur. Quid tum? Tu aliquem patronum invenies, hominem antiqui officii, qui splendorem nostrum et gratiam negligat? Pro me pugnabit L. Philippus, eloquentia, gravitate, honore florentissimus civitatis: dicet Hortensius, excellens ingenio, nobilitate, existimatione: aderunt autem homines nobilissimi ac potentissimi, quorum frequentiam et consessum non modo P. Quintius, qui de capite decernit, sed quivis qui extra periculum sit perhorrescat. Haec est iniqua certatio, non illa, qua tu contra Alfenum velitabaris: huic ne ubi consisteret quidem contra te locum reliquisti. Quare aut doceas oportet Alfenum negasse se procuratorem esse, non dejecisse libellos, judicium accipere noluisse; aut, quum haec ita facta sint, ex edicto te bona P. Quintii non possedisse concedas.

XXIII. Etenim si ex edicto possedisti, quaero cur bona non venierint, cur ceteri sponsores et creditores non convenerint. Ne-

judicium redditum] The praetor is generally said 'dare judicium' (Pro Flacco, c. 35) when he gives the plaintiff authority to proceed at law (agere). See Vol. I. Verr. Divin. c. 17.

non conditio, &c.] These words refer to the sponsio on which the case before Aquillius was founded.

mitto aequa,] 'I say nothing of a fair demand.' There is no various reading here. 'Aequa' stands in the place of an accusative after 'mitto,' though it is the nominative. Comp. Pro Murena, c. 15: 'Mitto praelia,' &c.

arcebitur.] This is Orelli's reading. There is said to be a reading 'arcessetur.' The passage is explained by the words of c. 9: 'ut te in jus adducerent, &c.' Accordingly 'arcessetur' is intelligible. 'Arcebitur' is supposed to mean 'the judex himself will be confined within limits of time;' but though this may be the meaning of the passage, this meaning does not appear to be expressed by 'arcebitur.'.

L. Philippus,] Cicero places L. Marcius Philippus as an orator next to Crassus and Antonius, but still far below them (Brutus, c. 47). He was consul B.C. 91. This is the Philippus of whom Horace tells a story (Ep. i. 7. 46). As to Hortensius see Vol. I. Divin. c. 14.

velitabaris:] He calls the affair between Naevius and Alfenus a skirmish, an affair of light troops. That took place when the Marian faction was in power; it was nothing, according to Cicero, compared with the present case, when Naevius had so many powerful men to support him. Keller's MSS. have 'equitabas.'—'huic ne ubi:' 'huic' is 'Quintio.'

23. *sponsores et creditores*] In place of 'sponsores' there is a reading 'possessores,' which is worth nothing. 'Sponsores et creditores' are often mentioned together (Philipp. vi. 4). 'Sponsores' are 'sureties' 'qui pro C. Quintio, P. fratre spoponderant,' says Manutius; and he is probably right.

Cicero asks why the property, if it was legally seized, was not sold for the benefit of the creditors, as the law required; for C. Quintius had left some debt (aliquantum aeris alieni). Keller supposes (p. 178) that Naevius could answer this objection of Cicero. He observes that when the property was seized and notice of sale was

mone fuit cui deberet Quintius? Fuerunt, et complures fuerunt; propterea quod C. frater aliquantum aeris alieni reliquerat. Quid ergo est? Homines erant ab hoc omnes alienissimi, et iis debebatur; neque tamen quisquam inventus est tam insignite improbus qui violare P. Quintii existimationem absentis auderet. Unus fuit, affinis, socius, necessarius, Sex. Naevius; qui, quum ipse ultro deberet, quasi eximio praemio sceleris exposito, cupidissime contenderet ut per se afflictum atque eversum propinquum suum non modo honeste partis bonis, verum etiam communi luce privaret. Ubi erant ceteri creditores? denique hoc tempore ubi sunt? quis est qui fraudationis caussa latuisse dicat? quis qui absentem defensum neget esse Quintium? Nemo invenitur. At contra omnes, quibuscum ratio huic aut est aut fuit, adsunt, defendunt; fides hujus, multis locis cognita, ne perfidia Sex. Naevii derogetur laborant. In hujusmodi sponsionem testes dare oportebat ex eo numero qui haec dicerent: vadimonium mihi deseruit: me fraudavit: a me nominis ejus quod infitiatus esset diem petivit: ego experiri non potui; latitavit, procuratorem nullum reliquit. Horum nihil dicitur.—Parantur testes qui haec dicant.—Verum, opinor,

given, the question was brought before the tribuni within the thirty days, and under the threat of one of them, M. Brutus, Alfenus promised a 'vadimonium' to Naevius in the name of Quintius. If the property had been seized, we must suppose that it would still remain in the possession of Naevius, but that he could not proceed to sell till the question of the possession was settled. And this was not settled yet, for it was the issue to be tried in this action. As to the other creditors having done nothing, we have only Cicero's word for that, as Keller remarks; and what is more to the purpose, the fact of Naevius having seized the property legally did not depend at all on what other creditors did. Further, he observes there was good reason why the other creditors should not meddle in the matter or act as if the property had been seized, when the whole affair from the beginning was involved in such perplexity.

ultro deberet,] Some of the critics have not understood this, and would mend it. Manutius understood it, and Graevius. Cicero says, 'though Naevius was even (ultro) a debtor to Quintius.' Schütz observes that it is strange that it is no where said that Naevius owed any thing to Quintius; but he overlooked the passages in c. 8, 13, and 28. Cicero here certainly affirms that something was due from Naevius to Quintius, which may not be true; but if Quintius could call on Naevius to give security 'judicatum solvi,' as Naevius called on Quintius, this means that it might turn out that Naevius was the debtor.

fides hujus, &c.] It is very doubtful if this is Latin. Cicero says (Pro Flacco, c. 4), 'non ego huic nationi fidem derogo;' but 'fides ne perfidia—derogetur' is a very different thing. Graevius would write: 'fides hujus multis locis cognita: ne perfidia Sex. Naevii ei derogetur.'

In hujusmodi sponsionem] There is a reading 'sponsione' in three of Keller's MSS.

diem petivit:] 'He asked for time,' that the payment of what was due should be deferred.

Horum nihil dicitur.] And what would be the use if it were said? If others could not or did not prove any thing against Quintius, that would not prevent Naevius from proving his case. But Cicero adds: "Parantur testes qui haec dicant." It appears then that there were witnesses on the other side ready to prove all this, or to prove something which would be considered unfavourable to Quintius. Cicero warns these witnesses to take care that they tell the truth. It seems as if he was afraid that they would prove something against his client.

viderimus, quum dixerint. Unum tamen hoc cogitent, ita se graves esse ut, si veritatem volent retinere, gravitatem possint obtinere; si eam negligent, ita leves sint ut omnes intelligant non ad obtinendum mendacium, sed ad verum probandum auctoritatem adjuvare. XXIV. Ego haec duo quaero: primum, qua ratione Naevius susceptum negotium non transegerit: hoc est, cur bona quae ex edicto possidebat non vendiderit: deinde, cur ex tot creditoribus aliis ad istam rationem nemo accesserit; ut necessario confiteare neque eorum tam temerarium quemquam fuisse, neque te ipsum id quod turpissime suscepisses perseverare et transigere potuisse. Quid si tu ipse, Sex. Naevi, statuisti, bona P. Quintii ex edicto possessa non esse? Opinor, tuum testimonium, quod in aliena re leve esset, id in tua, quoniam contra te est, gravissimum debet esse. Emisti bona Sex. Alfeni, L. Sulla dictatore vendente. Socium tibi in hujus bonis edidisti Quintium. Plura non dico. Cum eo tu voluntariam societatem coibas, qui te in hereditaria societate fraudarat; et eum judicio tuo comprobabas, quem spoliatum fama fortunisque omnibus arbitrabare?

Diffidebam mehercule, C. Aquilli, satis animo certo et confirmato me posse in hac caussa consistere. Sic cogitabam: quum contra dicturus esset Hortensius, et quum esset attente auditurus

ita leves sint] The regular construction would be 'ita leves esse,' for he has said 'ita se graves esse.'

24. *creditoribus aliis*] One Paris MS. at least has 'alius,' which Orelli supposes to be the true reading (see c. 29), though it is not in his text. Klotz has 'alius.'

voluntariam] It seems that Alfenus was one of the proscribed, and his property was sold. This was quite a recent thing, for Sulla became dictator the year before this oration was spoken, and he was dictator during the year (B.C. 81) in which it was spoken. Naevius bought the property, and he gave out (edidit) that it was on the joint account of Quintius and himself. This is the 'voluntaria societas.' The 'hereditaria societas' was not a partnership between Naevius and P. Quintius; it was the partnership of Naevius and C. Quintius, the accounts of which were to be settled between Naevius and P. Quintius.

This affair of the purchase of the property of Alfenus is stated by Cicero in a very loose way. Naevius gave out or declared that when he purchased (emisti), it was on the joint account of himself and of P. Quintius, for whom Alfenus had acted as a friend in his difficulties. If the fact of this joint purchase is true, P. Quintius might have some honest reason for becoming a purchaser of part of his friend's property. If it is not true, and we know no more than that Cicero says that Naevius said it was so (edidit), of course this argument of Cicero must go for nothing.

But if it was true, Cicero ought to have explained why his client became a purchaser of the property of a proscribed friend. He could not give a good reason for that, or I assume that he would. If Quintius was really acting as a purchaser of proscribed property, we must conclude either that his own was not in the hands of a creditor, or that in those troublesome times there were many irregular proceedings. The main matter is this: he and Naevius, who alleged that he had seized the property of Quintius, are represented by Naevius himself as being purchasers on a joint account. It is impossible that Naevius could at the same time affirm that Quintius was in the condition of a man whose property had been seized by a creditor 'ex edicto,' and at the same time in a condition to become a joint purchaser with this creditor. And this is Cicero's argument. He affirms that Naevius gave it out so; and he makes his conclusion. But Cicero does not say that P. Quintius was really a purchaser; such a thing would be

Philippus, fore uti permultis in rebus timore prolaberer. Dicebam huic Q. Roscio, cujus soror est cum P. Quintio, quum a me peteret et summe contenderet ut suum propinquum defenderem, mihi perdifficile esse contra tales oratores non modo tantam caussam perorare, sed omnino verbum facere conari. Quum cupidius instaret; homini pro amicitia familiarius dixi mihi videri ore durissimo esse qui praesente eo gestum agere conaretur; qui vero cum ipso contenderent, eos, etiamsi quid antea recti aut venusti habere visi sunt, id amittere: ne quid mihi ejusmodi accideret, quum contra talem artificem dicturus essem, me vereri. XXV. Tum mihi Roscius et alia multa confirmandi mei caussa dixit; et mehercule, si nihil diceret, tacito ipso officio et studio, quod habebat erga propinquum suum, quemvis commoveret. Etenim quum artifex ejusmodi sit ut solus dignus videatur esse qui in scena spectetur, tum vir ejusmodi est ut solus dignus videatur qui eo non accedat. Verumtamen, quid si, inquit, habes ejusmodi caussam ut hoc tibi planum sit faciendum, neminem esse qui possit biduo, aut summum triduo, septingenta millia passuum ambulare; tamenne vereris ut possis haec contra Hortensium contendere? Minime, inquam. Sed quid id ad rem? Nimirum, inquit, in eo caussa consistit. Quomodo? Docet me ejusmodi rem et factum simul Sex. Naevii, quod si solum proferretur satis esse deberet. Quod abs te, C. Aquilli, et a vobis, qui adestis in consilio, quaeso ut diligenter attendatis. Profecto intelligetis illinc ab initio cupiditatem pugnasse et audaciam; hinc veritatem et pudorem quoad potuerit restitisse. Bona postulas ut ex edicto possidere liceat. Quo die? Te ipsum, Naevi, volo audire: volo inauditum facinus ipsius qui id commisit voce convinci. Dic, Naevi, diem. Ante diem v. Kalend. intercalares. Bene agis.

quite inconsistent with the habits of P. Quintius as Cicero represents them. I conclude that Quintius was not a purchaser; and that if Naevius said that he was, which may be doubted, he had some reason for it; which reason the orator might perhaps have told us, if he chose. Let us suppose that Naevius for some reason lied, and that Cicero turned his lie to account.

Keller has some remarks on this passage, but I hardly understand them. It is a small thing for so long a note; but it requires a note, if it is only to show the difficulties of the passage.

Q. Roscio,] The 'comoedus' whose sister was the wife of Quintius. He was present when Cicero was speaking; or we must suppose him to have been present. He was a great master of action ('gestus'). Cicero says (De Or. ii. 57): "quamquam soleo saepe mirari eorum impudentiam qui agunt in scena gestum spectante Roscio."

contra talem artificem] Hortensius.

25. *et mehercule,*] 'ut mehercule' all Keller's MSS. except one; and it is the reading of some other MSS. also; and a good reading.

Nimirum,] See Vol. I. Verr. ii. 4. c. 57.—'quod attendatis:' in the Verr. ii. 3. c. 5 (Vol. I.), he says 'si reliqua attendetis;' and in Verr. ii. 5. c. 57 it is coupled with 'intelligere' thus: "quod iste homo barbarus ac dissolutus neque attendere unquam neque intelligere potuit." The complete expression occurs in Cicero in another place (Contra Rull. ii. c. 15): "sed attendite animos ad ea quae consequuntur."

Ante diem v. Kalend. intercalares.] The

Quam longe est hinc in saltum vestrum Gallicanum? Naevi, te rogo. Dcc millia passuum. Optime. De saltu dejicitur Quintius. Quo die? possumus hoc quoque ex te audire? Quid taces? dic, inquam, diem. Pudet dicere. Intelligo: verum et sero et nequidquam pudet. Dejicitur de saltu, C. Aquilli, pridie Kalend. intercalares. Biduo post, aut ut statim de jure aliquis cucurrerit, non toto triduo DCC millia passuum conficiuntur. O rem incredibilem! o cupiditatem inconsideratam! o nuntium volucrem! Administri et satellites Sex. Naevii Roma trans Alpes in Segusianos biduo veniunt. O hominem fortunatum qui ejusmodi nuntios seu potius Pegasos habeat. XXVI. Hic ego, si Crassi omnes cum Antoniis exsistant, si tu, L. Philippe, qui inter illos florebas, hanc caussam voles cum Hortensio dicere, tamen superior sim necesse est. Non enim, quemadmodum putatis, omnia sunt in eloquentia. Est quaedam tamen ita perspicua veritas ut eam infirmare nulla res possit. An antequam postulasti ut bona possideres, misisti qui curarent ut dominus de suo fundo a sua familia vi dejiceretur? Utrumlibet elige. Alterum incredibile est: alterum nefarium: et ante hoc tempus utrumque inauditum. Septingenta millia passuum vis esse decursa biduo? Dic. Negas? Ante igitur misisti. Malo. Si enim illud diceres, improbe mentiri viderere: quum hoc confiteris,

'Kalendae intercalares' are the Kalendae of the 'mensis intercalaris,' or the intercalated month of 22 or 23 days which was added in alternate years. The month was intercalated between the 23rd and 24th of February, which lost its last five days. The 'ante diem v. Kal. intercal.' is therefore the 20th of February; and 'pridie Kalend. intercalares' is the 23rd of February.—On 'ante diem v.' Orelli remarks: "Sic rectissime Manut. L. Notae A.D. (ante diem) saepe corruptae sunt in *ad* vel *ante* omisso *diem*, quod h. l. omittunt ceteri."

aut ut—de jure] "Or even if we suppose some one to have set out running forthwith from the court."—'Segusianos:' besides a reading 'Sebusianos' (if there is such a one) there are many others, all of which are false. The form 'Segusiani' is settled by Schneider (Caesar, B. G. i. 10) as that which has the best MSS. authority. Walckenaer (Géog. des Gaules, i. 332) says that all the MSS. of Cicero have 'Sebusianos,' except one which has 'Sepusianos,' which is entirely false. Caesar places the Segusiani beyond the limits of the Provincia, in the angle between the Saône and the Rhone. Strabo (p. 186, 192) calls Lugdunum, which in his time was a Roman colony, a city of the Segusiani; and the Roman Lugdunum was on the site of Fourvières, on the west side of the Saône. Ptolemy mentions two other towns in the country of the Segusiani, Rodumna (Roanne), and Forum Segusianorum, Feurs, both of which are west of the Rhone. Roanne is on the Loire, and Feurs is near it. It appears then that part of the territory of the Segusiani was east of the Rhone, but the greater part was west of the Rhone. Caesar calls the Segusiani clients or dependents of the Aedui (vii. 75); and both bordered on the Provincia (vii. 64). It appears that the 'saltus' or pasture grounds of Quintius were not in the Roman Provincia, for the Segusiani were beyond its limits even when Caesar was in Gallia (B.C. 58, &c.). The Aedui were however friends of the Romans, and so we may understand how Romans came to be in their country. This is said on the supposition that 'Segusianos' is the true reading; and it may be, but it is not certain. Walckenaer says that Cicero exaggerates the distance from Rome to the Segusiani, though he admits that we know nothing of the route except that it was through Volaterrae. It is immaterial for Cicero's argument whether the distance was 600 or 700 Roman miles.

id te admisisse concedis quod ne mendacio quidem tegere possis. Hoc consilium Aquillio et talibus viris tam cupidum, tam audax, tam temerarium probabitur? Quid haec amentia, quid haec festinatio, quid haec immaturitas tanta significat? non vim, non scelus, non latrocinium, non denique omnia potius quam jus, quam officium, quam pudorem? Mittis injussu praetoris. Quo consilio? Jussurum sciebas. Quid, quum jussisset, tum mittere nonne poteras? Postulaturus eras. Quando? Post dies xxx. Nempe si te nihil impediret; si voluntas eadem maneret; si valeres; denique si viveres. Praetor jussisset. Opinor, si vellet, si valeret, si jus diceret, si nemo recusaret quin ex ipsius decreto [et] satisdaret et judicium accipere vellet. Nam per Deos immortales, si Alfenus, procurator P. Quintii, tibi tum satisdaret et judicium accipere vellet, denique omnia quae postulares facere voluisset, quid ageres? Revocares eum quem in Galliam miseras? At hic quidem jam de fundo expulsus, jam a suis Diis penatibus praeceps ejectus, jam, quod indignissimum est, suorum servorum manibus, nuntio atque imperio

26. *Nempe si te*] See Vol. I. Verr. ii. 2. c. 6. The words 'post dies triginta' do not mean any definite time; and of course do not refer to the thirty days mentioned above (c. 8). 'When?' says Cicero: 'in thirty days or so.'

si nemo recusaret quin] The old reading is 'qui,' which Lambinus altered to 'quin' against all the MSS., as he says; but one of the Paris MSS. has 'quin' (certissime habet *quin*). Keller calls the conjecture of Lambinus 'ineptissima,' and yet Cicero had said before: 'non recusabat Quintius quin ita satisdaret.' The use of 'quin,' 'quo minus,' after 'recusare,' needs no explanation. If in place of 'si nemo' there had been 'si Alfenus non' or some such name, nobody would have thought of any other reading than 'quin.' Cicero means to say: "the praetor, I suppose, would have given an order for the seizure, if he had pleased, if he had been in health, if he had been discharging his usual functions, if there had been nobody to refuse giving security, and willing to abide by the judgment." This last part is somewhat strangely expressed by 'si nemo recusaret, &c.'

But there are examples of this use of 'nemo;' and one in Horace:

"Qui fit Maecenas ut nemo quam sibi sortem
Seu ratio dederit, seu fors objecerit, illa
Contentus vivat, laudet diversa sequentes?" (Sat. i. 1. 1.)

Facciolati, whose notes in refutation of Lambinus are quoted by Keller, misunderstood the Latin. He knew what Cicero meant to say, and nobody doubts that, but he says that 'quin satisdaret' would express the contrary to the intended meaning. It is however just to let him give his own explanation: "Praetor enim jussisset bona Quintii possidere, si nemo esset qui satisdando recusaret atque impediret *quod jubebatur*—Quod si legamus *quin satisdaret*, sensus huic omnino contrarius existit, valetque idem ac si diceretur, *Praetor jussisset si aliquis vellet satisdare ac judicium accipere*: quo sane nihil potest excogitari absurdius,"—except this attempt at explanation, not founded on Cicero's words, but on the words of the commentator. He thinks that it helps his case to refer to c. 19: "neque quemquam attinebat id recusare, quod praetor, non fieri, sed ex edicto suo fieri jubebat." But this is nothing to the purpose. It is a different kind of sentence. Facciolati again says that it is not Latin with 'quin,' for we cannot say 'si nemo recusaret quin satisdare vellet,' but we must say 'si nemo recusaret quin satisdaret;' which is exactly what Cicero does say. The 'et judicium accipere vellet' follows just like 'laudet' in the passage of Horace which is quoted by Manutius, who explained the 'nemo' correctly, though he read 'qui.' But if we have 'qui' in this passage, it is neither Latin nor sense.

tuo, violatus esset. Corrigeres haec scilicet tu postea. De cujusquam vita dicere audes, qui hoc concedas necesse est, ita te caecum cupiditate et avaritia fuisse, ut, quum postea quid futurum esset ignorares, accidere autem multa possent, spem maleficii praesentis in incerto reliqui temporis eventu collocares? Atque haec proinde loquor quasi ipso illo tempore, quum te praetor jussisset ex edicto possidere, si in possessionem misisses, debueris aut potueris P. Quintium de possessione deturbare.

XXVII. Omnia sunt, C. Aquilli, ejusmodi quivis ut perspicere possit, in hac caussa improbitatem et gratiam cum inopia et veritate contendere. Praetor te quemadmodum possidere jussit? Opinor, ex edicto. Sponsio quae in verba facta est? SI EX EDICTO PRAETORIS BONA P. QUINTII POSSESSA NON SUNT. Redeamus ad edictum. Id quemadmodum jubet possidere? Num quid est caussae, C. Aquilli, quin, si longe aliter possedit quam praetor edixit, iste ex edicto non possederit, ego sponsione vicerim? Nihil opinor. Cognoscamus edictum. QUI EX EDICTO MEO IN POSSESSIONEM VENERINT. De te loquitur, Naevi, quemadmodum tu putas. Ais enim te ex edicto venisse: tibi quid facias definit: te instituit, tibi praecepta dat. EOS ITA VIDETUR IN POSSESSIONE ESSE OPORTERE. Quomodo, QUOD IBIDEM RECTE CUSTODIRE

De cujusquam vita] He asks if Naevius is impudent enough to blame another man's life and behaviour, Quintius' for instance, when he was himself so greedy and precipitate, that "not knowing what might happen afterwards, and many things might have happened, he placed his hope of gain from present wrong doing on the uncertain issue of what time might produce." It seems that Naevius or his advocate Hortensius had attacked the character of Quintius.

Atque haec proinde, &c.] This does not seem clearly expressed. Most of the commentators have misunderstood it. Cicero says: "And when I say this, I am speaking just as if, at the time when the praetor had empowered you to take possession pursuant to the edict, supposing that you had sent men to take possession, you either ought to have ejected Quintius from possession or could have done it;" which Cicero does not admit.

27. *si—non sunt.*] The reading of all Keller's MSS. except one; and the true reading. See c. 8. Orelli omits the NON. Klotz has 'Ni—non sunt.'

in possessione esse] One Paris MS. has 'in possessionem.' See Pro Quintio, c. 5, note.

The object of this 'missio in possessionem' was to preserve the property for the benefit of creditors, as the words of the edict show, which Cicero cites, and to prevent the owner from carrying it off or disposing of it any way. It was 'rei servandae caussa' (Dig. 42. 4. 1). The edict provided, as it seems, that the owner was not to be forcibly ejected; but it also provided that things might be removed from the place, if they could not be safely watched there. The forcible ejection of the owner was therefore unnecessary, but it is very absurd for Cicero to represent both the owner and the men, who are sent to take possession, as being both in possession. He however shows us that he means nothing, for he says 'ita possideto, ut Quintio vis ne afferatur.' The person who was empowered to take possession had the detention of the things, and of course the owner had not. Cicero does not mention a provision in the edict for the benefit of the person who was empowered to take possession. It does not appear that force could be used in taking possession, but if the man who was empowered to take possession was prevented by the owner or by any body else, he had an action on the case (Dig. 43. 4. 1).

POTERUNT, ID IBIDEM CUSTODIANT. QUOD NON POTERUNT, ID AUFERRE ET ABDUCERE LICEBIT. Quid tum? DOMINUM, inquit, INVITUM DETRUDERE NON PLACET. Eum ipsum qui fraudandi caussa latitet; eum ipsum quem judicio nemo defendat; eum ipsum qui cum omnibus creditoribus suis male agat, invitum de praedio detrudi vetat. Proficiscenti tibi in possessionem praetor ipse, Sex. Naevi, palam dicit: ita possideto, ut tecum simul possideat Quintius: ita possideto, ut Quintio vis ne afferatur. Quid tu id, quemadmodum observas? Mitto illud dicere, eum qui non latitarit, cui Romae domus, uxor, liberi, procurator esset; eum qui tibi vadimonium non deseruisset: haec omnia mitto. Illud dico, dominum expulsum esse de praedio; domino a familia sua manus allatas esse ante suos Lares familiares. Hoc dico.

* * * *

XXVIII. ** Naevium ne appellasse quidem Quintium, quum simul esset, experiri posset quotidie; deinde quod omnia judicia difficillima cum summa sua invidia maximoque periculo P. Quintii fieri mallet quam illud pecuniarium judicium, quod uno die transigi posset; ex quo uno haec omnia nata et profecta esse concedit. Quo in loco conditionem tuli, si vellet pecuniam petere, P. Quintium judicatum solvi satisdaturum, dum ipse, si quid peteret, pari conditione uteretur.

Ostendi quam multa ante fieri convenerit quam hominis propinqui bona possideri postularentur; praesertim quum Romae domus ejus, uxor, liberi essent, et procurator aeque utriusque necessarius. Docui, quum desertum esse dicat vadimonium, omnino vadimonium nullum fuisse; quo die hunc sibi promisisse dicat, eo die ne Romae quidem eum fuisse: id testibus me pollicitus sum planum facturum, qui et scire deberent et caussam cur mentirentur non haberent. Ex edicto autem non potuisse bona possideri demonstravi; quod neque fraudandi caussa latitasse neque exsilii caussa solum vertisse

There is a defect in the MSS. of Cicero after the words 'Hoc dico,' for we have not the arguments in support of the third of the three things which Cicero undertook to prove: the 'nego possedisse' (c. 10). Hotmann says that he had seen a MS., not very old, with the following remark upon this passage on the margin: 'Hic in vetusto exemplari duo folia erant abscissa.'

It has been conjectured that Cicero went on to show that Quintius had not hid himself from his creditors; and that the passage of Ulpian (Dig. 42. 4. 7. § 4) may have referred to some thing that Cicero said here. The passage of Ulpian is: 'Latitare est non, ut Cicero definit, turpis occultatio sui,' &c. The latter part of chapter 29, 'Omnia autem bona, &c.' shows that something is lost after the end of c. 27.

28. Cicero in the beginning of this chapter merely says what he has said before.

possideri postularentur;] '*postularetur:* Pl. (*re* in litura),' Keller. I doubt if the common text, 'postularentur,' is Latin.

exsilii caussa, &c.] 'Solum vertere' is the common expression for leaving one's country. It is explained by Cicero (Pro

diceretur. Reliquum est ut eum nemo judicio defenderit. Quod contra copiosissime defensum esse contendi, non ab homine alieno, neque ab aliquo calumniatore atque improbo, sed ab equite Romano, propinquo et necessario suo, quem ipse Sex. Naevius procuratorem relinquere antea consuesset; neque eum, si tribunos appellarit, idcirco minus judicium pati paratum fuisse; neque potentia procuratoris Naevio jus ereptum: contra istum potentia sua tum tantummodo superiorem fuisse, nunc nobis vix respirandi potestatem dare. XXIX. Quaesivi quae caussa fuisset cur bona non venissent, quum ex edicto possiderentur. Deinde illud quoque requisivi, qua ratione ex tot creditoribus nemo neque tum idem fecerit, neque nunc contra dicat, omnesque pro P. Quintio pugnent; praesertim quum in tali judicio testimonia creditorum existimentur ad rem maxime pertinere. Postea sum usus adversarii testimonio, qui sibi eum nuper edidit socium quem, quo modo nunc intendit, ne in vivorum quidem numero tum demonstrat fuisse. Tum illam incredibilem celeritatem seu potius audaciam protuli: confirmavi necesse esse aut biduo DCC millia passuum esse decursa, aut Sex. Naevium diebus compluribus ante in possessionem misisse quam postularet uti ei liceret bona possidere. Postea recitavi edictum, quod aperte dominum de praedio detrudi vetaret: in quo constitit Naevium ex edicto non possedisse, quum confiteretur ex praedio vi detrusum esse Quintium. Omnia autem bona possessa non esse constitui: quod bonorum pos-

Caecina, c. 34): "qui volunt poenam aliquam subterfugere aut calamitatem, eo solum vertunt, hoc est, sedem ac locum mutant." See Pro Balb. c. 11.

Quod contra] This is a usual form in Cicero, as in De Sen. c. 23: 'cujus a me corpus crematum est, quod contra decuit ab illo meum;' and in De Am. c. 24: 'quod contra oportebat, &c.'

judicium pati] There are also readings 'judicio pati' and a reading 'in judicio pati.' See c. 20, note.

29. *intendit,*] The word 'intendit' is explained by the term 'intentio' (Gaius iv. § 41): "intentio est ea pars formulae qua actor desiderium suum concludit; velut haec pars formulae—Si paret hominem ex jure Quiritium Auli Agerii esse." The affirmation of Naevius was that the property of Quintius was 'possessa;' the consequence to Quintius was 'infamia,' and this was as bad as death, or worse.

Omnia autem] This is a difficult passage. Cicero argues that the 'bona' of Quintius were not 'possessa,' because all the 'bona' were not 'possessa.' He had a house at Rome, and slaves, which were not seized. In Gallia the private estate of Quintius was not seized; nor were all the private slaves of Quintius ejected from the estate, which was common property. We know no more of the facts than Cicero tells us, but there is no doubt that either ignorantly or purposely he has thrown the whole matter into confusion.

The ambiguity is in the word 'possessio,' which word in its technical sense is that possession which a man acquires with the 'animus domini,' the intention to keep the thing as his own. This is the only strict Possessio (Dig. 41. 2. 18). This possession is a right, and was protected by the interdicts. The 'missio in possessionem' was a part of execution. The creditor took possession in order to save the property, and with a view to its sale for his own benefit, as far as his claim extended; and it might be, for the benefit of other creditors. Cicero's argument then is good for nothing. Whatever Naevius seized pursuant to the edict was rightly seized; and it was not the less seized because other things were not seized.

sessio spectetur non in aliqua parte, sed in universis quae teneri ac possideri possint. Dixi Romae domum fuisse quo iste ne aspirarit quidem; servos complures ex quibus iste possederit neminem, ne

The 'missus in possessionem' had only the 'detentio' or physical power over the thing which he seized by virtue of the Praetor's authority. The following passage from Savigny (Das Recht des Besitzes, § 23, 5th ed.) will make this clear to those who have rightly conceived the meaning of the Roman technical term Possessio, as including the fact of the physical apprehension of a thing with the will to hold it as a man's own. "A fourth case in which Detention is transferred without Possession, refers to a form of Roman procedure, the Missio in possessionem. This permission of the Praetor to take Possession, was used for two different purposes: A) to transfer ownership (Bonitarian, that is to say, with the Conditio usucapiendi). It is true that Possessio also could be thus acquired, but this Possessio was no derived Possessio, but an original Possessio, because the Possessor possessed 'pro suo,' that is with the intention to treat it as his own—B) to prevent property being alienated, to secure the enjoyment of the produce, and so forth. These are cases in which mere Detention without Possession is acquired. The reason is this: it is not intended that the Missus in possessionem shall have Usucapion, for it is precisely by this that this Missio is distinguished from the first kind: for the purposes of the Interdicts it is also not necessary to allow that he has Possession, because independent of this, he has an Interdict of his own, which is distinct from the Possessional Interdicts, and even more advantageous than these (Dig. 4. 3. tit. 4). Accordingly it is easy to explain that in the case of every Missio of this kind the Missus gets no Possessio at all, but has merely the Detention of the thing in the name of the former Possessor."

In the title 'Uti possidetis' (Dig. 43. 17. 3. § 8) it is said: "Creditores missos in possessionem rei servandae caussa interdicto Uti possidetis uti non posse; et merito quia non possident. Idemque et in ceteris omnibus qui custodiae caussa missi sunt in possessionem dicendum est." And again, "aliud est enim possidere, longe aliud in possessione esse; denique rei servandae caussa, legatorum, damni infecti, non possident, sed sunt in possessione custodiae caussa" (Dig. 41. 2. 10. § 1). Or to make it still clearer we may take the words of Paullus (Dig. 41. 2. 3. § 23), who says that Q. Mucius made a very absurd remark, when he reckoned among the kinds of possession, that possession which we take of a thing by the order of a magistratus, for the purpose of its preservation; for the magistratus gives us only the custody of the thing, and the duty of watching over it.

The distinction between that Possessio which was a Right, and was protected by Interdicts, and between Detention or the physical power to hold a thing, and to exclude others from it, is expressed in other words by the difference between the Detention of a thing with the will to keep as our own, and the Detention of a thing not as our own, but as belonging to another. In this second case the (legal) Possession is not lost by him who has lost the Detention; and this would be the case here. And so we may in a manner understand Cicero, when he says (c. 27) 'ita possideto ut tecum simul possideat;' but unfortunately the 'possideto' and the 'possideat' have two different meanings. The 'possideto' is Detention; the 'possideat' is (legal) Possession. It follows that even if Quintius was expelled from his land, he did not lose the (legal) Possession; for the other did not expel him with the intention to hold it for himself.

When the Praetor empowered a creditor to take possession of the property of a debtor, the creditor must do some act in order to be 'in possession.' If it was land, he must enter upon it: and if it consisted of moveables, he must get them into his power. The terms of the Sponsio show that the possession under the Praetor's edict was a matter of fact, which was to be determined by the evidence. Now whether the creditor must do precisely the same acts that a man must do when he took possession of anything with the 'animus domini,' whether the Apprehension and Detention must be the same in both cases, or whether there was any difference, we do not know. I suppose there was not. As to a whole property, an estate and all that was on it, the act of Apprehension would be sufficient, if the creditor entered without resistance and affected to take possession of the whole. As to any particular slave, at least if he was not on the ground, it would be necessary to seize him (attingere). Cicero has left the matter in the greatest confusion, and not one of his commentators has done anything to help us.—'omnia autem bona:' 'Omnino'

attigerit quidem; unum fuisse quem attingere conatus sit; prohibitum fuisse; quievisse. In ipsa Gallia cognostis in praedia privata Quintii Sex. Naevium non venisse. Denique ex hoc ipso saltu, quem per vim expulso socio possedit, servos privatos Quintii non omnes ejectos esse. Ex quo et ex ceteris dictis, factis cogitatisque Sex. Naevii quivis potest intelligere, istum nihil aliud egisse neque nunc agere nisi uti per vim, per injuriam, per iniquitatem judicii totum agrum qui communis est suum facere possit.

XXX. Nunc caussa perorata, res ipsa et periculi magnitudo, C. Aquilli, cogere videtur ut te atque eos qui tibi in consilio sunt obsecret obtesteturque P. Quintius per senectutem ac solitudinem suam nihil aliud nisi ut vestrae naturae bonitatique obsequamini; ut, quum veritas cum hoc faciat, plus hujus inopia possit ad misericordiam quam illius opes ad crudelitatem. Quo die ad te judicem venimus, eodem die illorum minas quas ante horrebamus negligere coepimus. Si caussa cum caussa contenderet, nos nostram perfacile cuivis probaturos statuebamus. Quod vitae ratio cum ratione vitae decerneret, idcirco nobis etiam magis te judice opus esse arbitrati sumus. Ea res enim nunc in discrimine versatur utrum possitne se contra luxuriem ac licentiam rusticana illa atque inculta parsimonia defendere, an deformata atque ornamentis omnibus spoliata, nuda cupiditati petulantiaeque addicatur. ** Non comparat se tecum gratia P. Quintius, Sex. Naevi; non opibus, non facultate contendit. Omnes tuas artes, quibus tu magnus es, tibi concedit. Fatetur se non belle dicere, non ad voluntatem loqui posse; non ab afflicta amicitia transfugere atque ad florentem aliam devolare; non profusis sumptibus vivere; non ornare magnifice splendideque

the reading of Orelli, is the conjecture of Hotmann. The reading of all Keller's MSS. at least is 'omnia.' He argues that the sense requires 'omnino,' and that the authority of the MSS. must yield to the necessity of the argument. 'Omnino,' he says, implies a conclusion, and that is what we want. It may be so; but I think that 'omnia' may be easily explained, and it is something that all the MSS. so far as it appears, have this reading.—'aspirarit:' see Vol. I. Verr. 2. ii. c. 31.—'non omnes:' all the MSS. that Keller is acquainted with omit the 'non'; and yet it is necessary. There is nothing in which the MSS. are so often wrong as in the omission or the insertion of the negative; and no cases in which when we clearly see the meaning of the passage, we can more safely make the correction.

30. *Utrum possitne—an*] This is an instance of 'utrum' followed by 'ne' and 'an'; and I suppose that it is genuine. This form also occurs in direct questions. (Key's Latin Grammar, § 1425; and the note of Donatus on Terence, Adelp. iii. 3, 28, 'Utrum studione,' &c.)—'addicatur:' it seems probable that something is lost after 'addicatur' (Keller's note). 'Addictus' is said of a debtor who was delivered up to his creditor: at least this was the old Roman law.—'non ab afflicta:' Naevius had deserted the falling party of Marius to join the party of L. Sulla.—'adeo expositam:' 'expositam' is intended to express more than 'patentem,' and accordingly he adds 'adeo,' that is, 'so far as,' 'even.' Vol. I. Verr. ii. 2. c. 60.

convivium; non habere domum clausam pudori et sanctimoniae, patentem atque adeo expositam cupiditati et voluptatibus: contra sibi ait officium, fidem, diligentiam, vitam omnino semper horridam atque aridam cordi fuisse. Ista superiora esse ac plurimum posse his moribus sentit. Quid ergo est? non usque eo tamen ut in capite fortunisque hominum honestissimorum dominentur ii qui relicta bonorum virorum disciplina et quaestum et sumptum Gallonii sequi maluerunt, atque etiam, quod in illo non fuit, cum audacia perfidiaque vixerunt. Si licet vivere eum quem Sex. Naevius non vult; si est homini honesto locus in civitate invito Naevio; si fas est respirare P. Quintium contra nutum ditionemque Naevii; si, quae pudore ornamenta sibi peperit, ea potest contra petulantiam te defendente obtinere; spes est et hunc miserum atque infelicem aliquando tandem posse consistere. Sin et poterit Naevius id quod libet, et ei libebit quod non licet; quid agendum est? qui Deus appellandus est? cujus hominis fides imploranda est? qui denique questus, qui maeror dignus inveniri in calamitate tanta potest?

XXXI. Miserum est exturbari fortunis omnibus; miserius est injuria. Acerbum est ab aliquo circumveniri; acerbius a propinquo. Calamitosum est bonis everti; calamitosius cum dedecore. Funestum est a forti atque honesto viro jugulari; funestius ab eo cujus vox in praeconio quaestu prostitit. Indignum est a pari vinci aut superiore; indignius ab inferiore atque humiliore. Luctuosum est tradi alteri cum bonis; luctuosius inimico. Horribile est caussam capitis dicere; horribilius priore loco dicere. Omnia circumspexit

Quid ergo est? non usque &c.] Manutius explains this: 'Quid ex eo sequitur? non usque eo tamen superiora esse sentit ut,' &c.—'Gallonius.' This noted 'praeco' was not forgotten even in Horace's time, who uses him as an example (Sat. ii. 2. v. 47):

"——Haud ita pridem
Galloni praeconis erat acipensere mensa
Infamis."

This Gallonius lived as far back as the time of Lucilius, who attacks him in his rough verses (Cic. De Fin. ii. 8):

"O Publi, O gurges Galloni, es homo miser, inquit.
Caenasti in vita numquam bene, quum omnia in ista
Consumis squilla atque acipensere cum decumano."

aliquando tandem] Some editions have 'aliquando tamen,' but I do not know what MSS. authority there is for 'tamen.' 'Tandem' and 'tamen' are sometimes confounded. Either might do here.—'quod non licet:' this is explained by Cicero, Phil. xiii. 6: "Licet autem nemini contra patriam ducere exercitum; si quidem licere id dicimus quod legibus, quod more majorum institutisque conceditur."

31. *quaestu prostitit.*] There is a reading 'quaestum praestitit' or 'praestitit quaestum,' which Manutius was acquainted with, but he judiciously preferred what is in the text. Klotz has 'praestitit quaestum,' and he has not noticed the reading 'quaestu prostitit.' 'Prostitit' expresses Cicero's contempt for the occupation of Naevius, whose 'vox' may be said 'prostare;' as Juvenal says (ix. 24) "quo non prostat femina templo;" and Sat. i. 47.

Quintius, omnia periclitatus est, C. Aquilli; non praetorem modo a quo jus impetraret invenire potuit atque adeo ne unde arbitratu quidem suo postularet, sed ne amicos quidem Sex. Naevii; quorum saepe et diu ad pedes jacuit stratus, obsecrans per Deos immortales, ut aut secum jure contenderent, aut injuriam sine ignominia sibi imponerent. Denique ipsius inimici vultum superbissimum subiit: ipsius Sex. Naevii lacrimans manum prehendit in propinquorum bonis proscribendis exercitatam: obsecravit per fratris sui mortui cinerem, per nomen propinquitatis, per ipsius conjugem et liberos, quibus propior P. Quintio nemo est, ut aliquando misericordiam caperet; aliquam, si non propinquitatis, at aetatis suae, si non hominis, at humanitatis rationem haberet; ut secum aliquid, integra sua fama, qualibet dummodo tolerabili conditione transigeret. Ab ipso repudiatus, ab amicis ejus non sublevatus, ab omni magistratu agitatus atque perterritus, quem praeter te appellet habet neminem; tibi se, tibi suas omnes opes fortunasque commendat: tibi committit existimationem ac spem reliquae vitae. Multis vexatus contumeliis, plurimis jactatus injuriis, non turpis ad te, sed miser confugit: e fundo ornatissimo dejectus, ignominiis omnibus appetitus, quum illum in suis paternis bonis dominari videret, ipse filiae nubili dotem conficere non posset, nihil alienum tamen vita superiore commisit. Itaque te hoc obsecrat, C. Aquilli, ut quam existimationem, quam honestatem in judicium tuum prope acta jam aetate decursaque attulit, eam liceat ei secum ex hoc loco efferre; ne is, de cujus officio nemo umquam dubitavit, sexagesimo denique anno dedecore, macula turpissimaque ignominia notetur; ne ornamentis ejus omnibus Sex. Naevius pro spoliis abutatur: ne per te ferat, quo minus

invenire potuit] One of Keller's MSS. has 'non potuit;' and other MSS. too, it seems. Klotz has 'non potuit.' Lallemand has the usual explanation, that 'non modo' is often put for 'non modo non.' It is possible that there was some confusion in the use of the negative in such expressions. But if we observe the sense of the passage, and the contrast of the words, it will be plain that 'non potuit' is not right. 'Non praetorem' is opposed to 'ne amicos quidem,' and 'modo' qualifies 'praetorem,' as in the form 'tantum modo.' Cicero says 'not so much as a praetor to get justice from could he find, nay not one from whom he could even obtain the kind of action that he wished; not even the friends of Naevius.' The sentence is evidently defective, and Cicero may have left it so, for there is no verb in the clause 'sed ne amicos quidem Naevii,' and there is nothing in the preceding part of the sentence from which the proper verb can be supplied. The Latin cannot be expressed in English with any great accuracy, unless we entirely alter the form of the expression, and when the form is entirely altered it is not a translation. 'Arbitratu quidem suo' means that the praetor would not allow him to choose his own way of settling the dispute between himself and Naevius. P. Quintius wished to try simply the question of debt between himself and Naevius: 'de re pecuniaria contendere cupio,' as Cicero makes him say.

Si non—at] See Vol. I. Verr. ii. 3. c. 4.—'at sermone,' &c. 'per te ferat:' Passeratius says "non possum ferre verbum *ferat: suspicor legendum esse, ne per te fiat.*" There

quae existimatio P. Quintium usque ad senectutem perduxit, eadem usque ad rogum prosequatur.

is no variation in the MSS. 'Ferre' sometimes means 'to get,' 'to obtain,' as 'suffragia tulisse' (Pro Cn. Plancio, c. 22). The nominative to 'ferat' then is 'Naevius;' and the meaning is, 'that Naevius may not get such a judgment from you as will prevent the good name, which has accompanied P. Quintius to his old age, from following him even to the funeral pile.'

PRO SEX. ROSCIO AMERINO

ORATIO.

INTRODUCTION.

The facts of this case are stated clearly in the oration. It is a speech of Cicero, his first in a Publica Caussa, in defence of Sex. Roscius Amerinus, who was tried for the murder of his father. It does not appear from this speech what the evidence was against S. Roscius, the son, or that there was any evidence; for Cicero does not argue against any evidence. He says in one passage that the evidence had not been heard. But it is a defence, and a reply to Erucius, who was the accusator of S. Roscius, at the instigation of Chrysogonus, as we are told. Erucius then had opened the case with a statement of the charge against Roscius, and some matters, we must suppose, that he would try to prove in support of the charge.

Plutarch's story is (Cicero, c. 3) that Chrysogonus laid an information about the property of S. Roscius, the father, as being one of the proscribed, and that the property being accordingly sold, he bought it for a small sum. He adds: "Roscius, the son and heir of the dead man, complained of this, and showed that the property was of the value of two hundred and fifty talents, on which Sulla being convicted, was angry, and with the assistance of Chrysogonus instituted a prosecution against Roscius for parricide." This is not exactly Cicero's story, but it may contain some truth. Cicero could not venture to affirm that Sulla was privy to all the villainy of which he speaks. Plutarch says that Roscius was acquitted; which we might infer from a passage of Cicero (Brutus c. 90); and in another passage he distinctly affirms it (De Off. ii. 14). He has himself in his Orator (c. 30) passed a judgment on this juvenile production. It appears that Cicero left it as he wrote it, though it was his fashion to work up and improve his speeches. He was still a young man when he made this speech, fresh from the rhetorical schools, and twenty-seven years of age, as Gellius shows (xv. 28),

for this oration was delivered in the consulship of L. Sulla Felix and Q. Metellus Pius, B. C. 80, and in the year after the oration Pro P. Quintio.

After being engaged two years as an orator, Cicero visited Athens and Asia (Brutus c. 90). It appears then that he left Rome after delivering this speech, for the purpose of his health and improvement, as he says; but, as Plutarch found somewhere (Cicero c. 3), for fear of Sulla.

Among the numerous Leges enacted during the power of L. Cornelius Sulla, was a Lex Cornelia De Sicariis et Veneficis (Dig. 48. Tit. 8). There is no evidence that a Lex de Parricidiis was enacted during Sulla's time. The Title of the Digest which treats of this crime, is Lex Pompeia de Parricidiis (Dig. 48. Tit. 9). The Lex Pompeia, which was enacted B.C. 55, declared that the murderer of a father, mother, and so forth, should be liable to the penalties of the Lex Cornelia De Sicariis (Marcianus, Dig. 48. 9. 1); and in another excerpt under this Title (l. 9) it is said that the punishment of Parricidium (more majorum) was the culleus or sack. This punishment existed under the empire. It was an old punishment, and not enacted by the Lex Pompeia, for it is stated that the penalty of Parricidium, as defined by the Lex Pompeia, was that which was fixed by the Lex Cornelia De Sicariis. Now this is ambiguous. We might infer that the punishment of assassins and poisoners by the Lex Cornelia was the sack; but we know that the punishment was different (Dig. 48. 8. 3. § 5: "Legis Corneliae de sicariis et veneficis poena insulae deportatio est, et omnium bonorum ademptio"). The best solution of the difficulty seems to be the assumption that there was a chapter (caput) in the Lex Cornelia de Sicariis, which treated of Parricidium, and that the Lex Pompeia only defined Parricidium more exactly. Or, as Schrader expresses it in one of the notes in his learned edition of the Institutes of Justinian (Inst. iv. 18. § 5, 6. p. 768): "Lex Cornelia de sicariis, quae homicidis solum vertere permisit, parricidas manifestos ita excepit, ut more majorum culleo insuerentur. Lex Pompeia eam confirmans, multorum propinquorum caedem parricidio aequiparavit." Other explanations, which however are worth nothing, are mentioned by Rein (Das Criminal-recht der Römer p. 455, note). Schrader has collected in his notes all the learning about the sack; and more than most people would care to know.

The trial of Roscius was a Judicium Publicum, the nature of which has been explained (Vol. I. Judicia, Excursus); and he was probably tried under the Lex Cornelia De Sicariis.

M. TULLII CICERONIS

PRO

SEX. ROSCIO AMERINO ORATIO.

I. Credo ego vos, judices, mirari quid sit quod, quum tot summi oratores hominesque nobilissimi sedeant, ego potissimum surrexerim, qui neque aetate neque ingenio neque auctoritate sim cum his qui sedeant comparandus. Omnes enim hi, quos videtis adesse in hac caussa, injuriam novo scelere conflatam putant oportere defendi; defendere ipsi propter iniquitatem temporum non audent. Ita fit ut adsint propterea quod officium sequuntur; taceant autem idcirco quia periculum metuunt. Quid ergo audacissimus ego ex omnibus? Minime. At tanto officiosior quam ceteri? Ne istius quidem laudis ita sum cupidus ut aliis eam praereptam velim. Quae me igitur res praeter ceteros impulit ut caussam Sex. Roscii reciperem? Quia, si quis istorum dixisset, quos videtis adesse, in quibus summa auctoritas est atque amplitudo; si verbum de re publica fecisset, id quod in hac caussa fieri necesse est, multo plura dixisse quam dixisset putaretur. Ego etiamsi omnia quae dicenda sunt libere dixero, nequaquam tamen similiter oratio mea exire atque in vulgus emanare poterit. Deinde, quod ceterorum neque dictum obscurum potest esse propter nobilitatem et amplitudinem, neque temere dicto concedi propter aetatem et prudentiam; ego si quid liberius dixero, vel occultum esse propterea quod nondum ad rem publicam accessi,

1. *his qui*] Some MSS. have 'iis qui,' but the words are emphatic; and what follows 'omnes enim hi,' seems to show that he had said 'his.'—'defendi:' the primary meaning of 'defendere' is 'to repel,' 'to drive off.'

temere dicto concedi] 'What they say or would say could not readily be assented to or allowed to pass unnoticed because of their age and character for judgment.' What these 'nobiles' would say, would have weight for the reasons which he gives; but his words would have little weight. Comp. Ad Div. vi. 6: "Si tibi, cui justius videtur irasci posse, concesserit." Cicero had not yet filled any public office (nondum ad rem publicam accessi). He was too young.

vel ignosci adolescentiae meae poterit: tametsi non modo ignoscendi ratio, verum etiam cognoscendi consuetudo jam de civitate sublata est. Accedit illa quoque caussa, quod a ceteris forsitan ita petitum sit ut dicerent ut utrumvis salvo officio se facere posse arbitrarentur: a me autem ii contenderunt, qui apud me et amicitia et beneficiis et dignitate plurimum possunt, quorum ego neque benevolentiam erga me ignorare, nec auctoritatem aspernari, nec voluntatem negligere debeam. II. His de caussis ego huic caussae patronus exstiti, non electus unus qui maximo ingenio, sed relictus ex omnibus, qui minimo periculo possem dicere; neque uti satis firmo praesidio defensus Sex. Roscius, verum uti ne omnino desertus esset. Forsitan quaeratis qui iste terror sit et quae tanta formido, quae tot ac tales viros impediat quo minus pro capite et fortunis alterius, quemadmodum consuerunt, caussam velint dicere. Quod adhuc vos ignorare non mirum est, propterea quod consulto ab accusatoribus ejus rei quae conflavit hoc judicium mentio facta non est. Quae res ea est? Bona patris hujusce Sex. Roscii, quae sunt sexagies: quae de viro fortissimo et clarissimo, L. Sulla, quem honoris caussa nomino, duobus millibus nummum sese dicit emisse adolescens vel potentissimus hoc tempore nostrae civitatis, L. Cornelius Chrysogonus. Is a vobis, judices, hoc postulat ut, quoniam in alienam pecuniam tam plenam atque praeclaram nullo jure invaserit, quoniamque ei pecuniae vita Sex. Roscii obstare atque officere videatur, deleatis ex animo suo suspicionem omnem metumque tollatis: sese hoc incolumi non arbitratur hujus innocentis patrimonium tam amplum et copiosum posse obtinere; damnato et ejecto sperat se posse

ignoscendi—cognoscendi] This is boldly said at a time when the tyrant Sulla was in power. Sulla never pardoned, and inquiry in legal form (cognoscendi) was out of fashion; at least such a trial as an innocent man could rely on. The legislation of Sulla had excluded the Equites from the office of Judices, and the Senators, who were his tools, were the class out of which the Judices were now taken (Vol. I. p. 46). In c. 3 Cicero says: "qui ex civitate in Senatum propter dignitatem, ex senatu in hoc consilium delecti estis propter severitatem."

ut dicerent] He says that others who might have been asked or were asked to speak in defence of Roscius (ut dicerent), had been applied to in such wise that they supposed they might either refuse or assent, might do as they liked, without violating any moral obligation (salvo officio). The words which follow show by implication that the persons who applied to them had not the same title to ask for assistance, which those had who addressed themselves to Cicero.

2. *sexagies:*] According to the Roman reckoning, 'decies' is a sum of a million sesterces. There is a good story about a 'decies' in Plutarch's Life of Antonius, c. 4; which also shows what a Decies is. It is equal to 250,000 denarii, that is, 1,000,000 sestertii; and 'sexagies' is six times as much.

L. Cornelius Chrysogonus.] Cicero gives his full name, which tells us that he was a Greek and a freedman of Sulla, one of the many thousands, ten thousand it is said, who had been manumitted and had taken Sulla's gentile name. Plutarch (Cicero, c. 3) tells the story of Chrysogonus buying the property of Roscius for 2000 drachmae. Plutarch's drachmae have the value of the Roman denarii; and he adds that the property was worth 250 talents. See c. 3, note.

quod adeptus est per scelus, id per luxuriam effundere atque consumere. Hunc sibi ex animo scrupulum, qui se dies noctesque stimulat ac pungit, ut evellatis postulat, ut ad hanc suam praedam tam nefariam adjutores vos profiteamini. Si vobis aequa et honesta postulatio videtur, judices, ego contra brevem postulationem affero, et, quomodo mihi persuadeo, aliquanto aequiorem. III. Primum a Chrysogono peto ut pecunia fortunisque nostris contentus sit, sanguinem et vitam ne petat: deinde a vobis, judices, ut audacium sceleri resistatis, innocentium calamitatem levetis et in caussa Sex. Roscii periculum quod in omnes intenditur propulsetis. Quod si aut caussa criminis aut facti suspicio aut quaelibet denique vel minima res reperietur, quamobrem videantur illi nonnihil tamen in deferendo nomine secuti, postremo si praeter eam praedam quam dixi quidquam aliud caussae inveneritis, non recusamus quin illorum libidini Sex. Roscii vita dedatur. Sin aliud agitur nihil nisi ut iis ne quid desit quibus satis nihil est; si hoc solum hoc tempore pugnatur ut ad illam opimam praeclaramque praedam damnatio Sex. Roscii velut cumulus accedat; nonne quum multa indigna, tum vel hoc indignissimum est, vos idoneos habitos per quorum sententias jusque jurandum id assequantur, quod antea ipsi scelere et ferro assequi consuerunt? qui ex civitate in senatum propter dignitatem, ex senatu in hoc consilium delecti estis propter severitatem, ab his hoc postulare homines sicarios atque gladiatores, non modo ut supplicia vitent, quae a vobis pro maleficiis suis metuere atque horrere debent, verum etiam ut spoliis Sexti Roscii hoc judicio ornati auctique discedant? IV. His de rebus tantis tamque atrocibus neque satis me commode dicere, neque satis graviter conqueri, neque satis libere vociferari posse intelligo. Nam commoditati ingenium, gravitati aetas, libertati tempora sunt impe-

scrupulum,] See Vol. I. Divin. c. 11. The metaphor is not well used here.—Some editions have 'stimulet ac pungat,' which is intelligible.

3. *nonnihil tamen*] 'Tamen' is placed thus, when it qualifies a single word or more which precede it. The use of ὅμως in Greek is the same. By 'secuti' he means, that they should seem to have been pursuing something, to have shown some reason, however small, for laying this information. Hotmann, for the benefit of certain 'non imperiti,' explains that 'deferre nomen' is not exactly 'accusare;' and so we suppose. The first part of a criminal proceeding is to charge a man with a crime, in doing which his name must be given in (c. 10: 'ut nomen hujus de parricidio deferrent').

ex civitate in senatum] This seems to be explained by what Appian (B.C. i. 100) says: "He added to the Senate, which was very deficient in numbers owing to the civil commotions and the wars, about three hundred from the noblest Equites, allowing the tribes to vote upon each. And he manumitted and enrolled in the Plebs the youngest slaves of those who had been put to death and the strong, more than ten thousand, and he made them Roman citizens, and named them Cornelii from himself, that he might have ten thousand Plebeii ready to do his bidding."

dimento. Huc accedit summus timor, quem mihi natura pudorque meus attribuit, et vestra dignitas et vis adversariorum et Sex. Roscii pericula. Quapropter vos oro atque obsecro, judices, ut attente bonaque cum venia verba mea audiatis. Fide sapientiaque vestra fretus plus oneris sustuli quam ferre me posse intelligo. Hoc onus si vos aliqua ex parte allevabitis, feram ut potero studio et industria, judices: sin a vobis id quod non spero deserar, tamen animo non deficiam et id quod suscepi quoad potero perferam. Quod si perferre non potero, opprimi me onere officii malo quam id quod mihi cum fide semel impositum est aut propter perfidiam abjicere aut propter infirmitatem animi deponere. Te quoque magno opere, M. Fanni, quaeso ut, qualem te jam antea populo Romano praebuisti, quum huic idem quaestioni judex praeesses, talem te et nobis et populo Romano hoc tempore impertias. V. Quanta multitudo hominum convenerit ad hoc judicium vides: quae sit omnium mortalium exspectatio, quae cupiditas ut acria ac severa judicia fiant, intelligis. Longo intervallo judicium inter sicarios hoc primum committitur, quum interea caedes indignissimae maximaeque factae sint. Omnes hanc quaestionem te praetore de manifestis maleficiis quotidianoque sanguine haud remissius sperant futuram. Qua vociferatione in ceteris judiciis accusatores uti consueverunt, ea nos hoc tempore utimur qui caussam dicimus. Petimus abs te, M. Fanni, a vobisque, judices, ut quam acerrime maleficia vindicetis, ut quam fortissime hominibus audacissimis resistatis, ut hoc cogitetis, nisi in hac caussa qui vester animus sit ostendetis, eo prorumpere hominum cupiditatem et scelus et audaciam ut non modo clam, verum etiam hic in foro ante tribunal tuum, M. Fanni, ante pedes vestros, judices, inter ipsa subsellia caedes futurae sint. Etenim

4. *magno opere,*] 'maximo opere:' Orelli.

M. Fanni,] Nothing is known of this Fannius, who was now praetor. He had presided in the courts before as we are here told, in like cases. It is said that there is a reading 'huic eidem quaestioni,' but we may safely reject it. The true explanation seems to be that Fannius had been 'judex quaestionis' on some former occasions. The nature of the office of the 'judex quaestionis' is explained Vol. I. Verr. ii. 1. c. 61. The form 'judex quaestionum' occurs in an inscription.

5. *inter sicarios—caedes*] Cicero speaks very plainly of the bloody work of Sulla. Plutarch, one of the few authorities for the history of this period, tells us after his fashion (Sulla, c. 31, &c.) something of Sulla's proscriptions and his murders. It seems that for some time there had been no inquiry into the murders, which were committed at Rome, some of which had been doubtless committed from private revenge or from love of gain, for when the practice of proscribing or putting up the names of men who might be killed was once established, it is easy to see that assassination could always find a pretext or excuse.

caussam dicimus.] The 'reus' or accused is said 'caussam dicere;' and 'accusare' is opposed to it. Livy (xxix. 19) has "ex vinculis caussam dicere."

ostendetis,] So the MSS. seem to be. I see no reason for Ernesti's 'ostenderitis,' which Orelli has.

quid aliud hoc judicio tentatur nisi ut id fieri liceat? Accusant ii qui in fortunas hujus invaserunt: caussam dicit is cui praeter calamitatem nihil reliquerunt: accusant ii quibus occidi patrem Sex. Roscii bono fuit: caussam dicit is cui non modo luctum mors patris attulit, verum etiam egestatem: accusant ii qui hunc ipsum jugulare summe cupierunt: caussam dicit is qui etiam ad hoc ipsum judicium cum praesidio venit, ne hic ibidem ante oculos vestros trucidetur: denique accusant ii quos populus poscit: caussam dicit is qui unus relictus ex illorum nefaria caede restat. Atque ut facilius intelligere possitis, judices, ea quae facta sunt indigniora esse quam haec sunt quae dicimus, ab initio res quemadmodum gesta sit vobis exponemus; quo facilius et hujus hominis innocentissimi miserias et illorum audaciam cognoscere possitis et rei publicae calamitatem.

VI. Sex. Roscius, pater hujusce, municeps Amerinus fuit, quum genere et nobilitate et pecunia non modo sui municipii verum etiam ejus vicinitatis facile primus, tum gratia atque hospitiis florens hominum nobilissimorum. Nam cum Metellis, Serviliis, Scipionibus erat ei non modo hospitium verum etiam domesticus usus et consuetudo; quas, ut aequum est, familias honestatis amplitudinisque gratia nomino. Itaque ex suis omnibus commodis hoc solum filio reliquit; nam patrimonium domestici praedones vi ereptum possident: fama et vita innocentis ab hospitibus amicisque paternis defenditur. Hic quum omni tempore nobilitatis fautor fuisset, tum hoc tumultu proximo, quum omnium nobilium dignitas et salus in discrimen veniret, praeter ceteros in ea vicinitate eam partem caussamque opera, studio, auctoritate defendit. Etenim rectum putabat pro eorum honestate se pugnare, propter quos ipse honestissimus

quibus—bono] This is a common use of the dative (bono), worth noticing perhaps as it explains the expression 'cui bono' (c. 30), where 'cui' is the person and 'bono' the object or purpose.

populus poscit:] 'The people call for their punishment.'

6. *municeps Amerinus*] Ameria, now Amelia, was an old Umbrian town, south of Tuder and between the Nar and the Tiberis. The place was a Municipium or Italian town, which by virtue of the Lex Julia and Lex Plautia Papiria (B.C. 90, 89) had the Roman 'civitas' (Vol. I. Verr. ii. 5. c. 22). The term Municipium requires an historical exposition, but it may be sufficient for the present purpose to remember that when all Italia (in the limited sense of that term, which excludes Gallia Cisalpina), received the Roman 'civitas' by virtue of the two Leges mentioned above, all the Italian towns which were not Coloniae Civium Romanorum, were properly comprehended under the term Municipia, even the Latinae Coloniae.

tumultu proximo,] This word 'tumultus' is explained in one sense by Cicero (Philipp. viii. 1. See Vol. I. Verr. ii. 4. c. 23). Here he alludes to the year of the consulship of C. Marius the younger and Cn. Papirius Carbo (B.C. 82), in which year Sulla finally defeated the Marian faction. C. Marius was shut up in Praeneste and killed himself (Plutarch, Sulla, c. 28—32; Appian, B. C. i. 88, &c.).

inter suos numerabatur. Posteaquam victoria constituta est ab armisque recessimus, quum proscriberentur homines atque ex omni regione caperentur ii qui adversarii fuisse putabantur, erat ille Romae frequens atque in foro et in ore omnium quotidie versabatur; magis ut exsultare victoria nobilitatis videretur quam timere ne quid ex ea calamitatis sibi accideret. Erant ei veteres inimicitiae cum duobus Rosciis Amerinis, quorum alterum sedere in accusatorum subselliis video, alterum tria hujusce praedia possidere audio: quas inimicitias si tam cavere potuisset quam metuere solebat, viveret. Neque enim, judices, injuria metuebat. Nam duo isti sunt T. Roscii, quorum alteri Capitoni cognomen est, iste qui adest Magnus vocatur, homines ejusmodi: alter plurimarum palmarum vetus ac nobilis gladiator habetur; hic autem nuper se ad eum lanistam contulit: qui quum ante hanc pugnam tiro esset scientia, facile ipsum magistrum scelere audaciaque superavit. VII. Nam quum hic Sex. Roscius esset Ameriae, T. autem iste Roscius Romae; quum hic filius assiduus in praediis esset quumque se voluntate patris rei familiari vitaeque rusticae dedisset; iste autem frequens Romae esset; occiditur ad balneas Palatinas rediens a caena Sex. Roscius. Spero ex hoc ipso non esse obscurum ad quem suspicio maleficii pertineat: verum id quod adhuc est suspiciosum nisi perspicuum res ipsa fecerit, hunc affinem culpae judicatote. Occiso Sex. Roscio primus Ameriam nuntiat Mallius Glaucia quidam, homo tenuis, libertinus, cliens et familiaris istius T. Roscii; et nuntiat domum non filii, sed T. Capitonis inimici: et quum post horam primam noctis occisus esset, primo diluculo nuntius hic Ameriam venit. Decem horis nocturnis sex et quinquaginta millia passuum cisiis pervolavit, non modo ut exoptatum

in ore omnium] Pro Lege Manilia, c. 3: "in Asiae luce versari."

plurimarum palmarum] Cicero compares him to an old gladiator who had got many victories and been rewarded with many 'palmae' (Gellius iii. 6: "Palmam signum esse placuit victoriae"). Livy (x. 47): "palmaeque tum primum translato e Graecia more victoribus datae."—'quum—tiro esset scientia:' Klotz has 'qui ante hanc pugnam tiro esset, quod sciam, facile &c.' He has not mentioned in his Preface (Vol. I. Vorrede, p. 62) where he got this reading from; nor can I discover. In his Preface he speaks of some of the passages in which his edition differs from others; but he has not mentioned this. I suspect it to be what he calls an emendation. I do not notice all the variations of Klotz. He is sometimes ingenious; but in my judgment more frequently wrong than right in his corrections and alterations.

7. *ad balneas Palatinas*] I can find nothing more about these 'balneae;' and the matter is of no importance here.—'hunc affinem:' 'hunc' is the son, Sext. Roscius, whom Cicero is defending. 'Affinem:' Vol. I. Verr. ii. 2. c. 38.

Mallius Glaucia] Some MSS. have Manlius. It seems very likely that the names Manilius, Manlius, and Mallius are originally the same; but whether this is so or not, it seems that there was a distinction between the Mallii, and the Manlii and Manilii. Wunder (Pro Cn. Plancio, p. 75, note) adopts this opinion of Manutius.—'cisiis:' the 'cisium' is a light two-wheeled carriage. Art. Cisium, Dict. of Antiqus.

inimico nuntium primus afferret, sed etiam cruorem inimici quam recentissimum telumque paullo ante e corpore extractum ostenderet. Quatriduo quo haec gesta sunt res ad Chrysogonum in castra L. Sullae Volaterras defertur; magnitudo pecuniae demonstratur: bonitas praediorum, nam fundos decem et tres reliquit, qui Tiberim fere omnes tangunt; hujus inopia et solitudo commemoratur. Demonstrant, quum pater hujusce Sex. Roscius, homo tam splendidus et gratiosus, nullo negotio sit occisus, perfacile hunc hominem incautum et rusticum et Romae ignotum de medio tolli posse. Ad eam rem operam suam pollicentur. Ne diutius teneam, judices, societas coitur. VIII. Quum jam proscriptionis mentio nulla fieret, et quum etiam qui antea metuerant redirent ac jam defunctos sese periculis arbitrarentur, nomen refertur in tabulas Sexti Roscii, hominis studiosissimi nobilitatis: manceps fit Chrysogonus. Tria praedia vel nobilissima Capitoni propria traduntur, quae hodie possidet: in reliquas omnes fortunas iste T. Roscius nomine Chrysogoni, quemadmodum ipse dicit, impetum facit. Haec bona sexagies H-S emuntur duobus millibus nummum. Haec omnia, judices, imprudente L. Sulla facta esse certo scio. Neque enim mirum, quum eodem tempore et ea quae praeterita sunt et ea quae videntur instare praeparet, quum et pacis constituendae rationem et belli gerendi potestatem solus habeat, quum omnes in unum spectent, unus omnia gubernet, quum tot tantisque negotiis distentus sit ut respirare libere non possit, si aliquid non animadvertat; quum praesertim tam multi occupationem ejus observent, tempus-

Quatriduo quo] This expression should be clearly understood. It is no doubt elliptical, and the meaning might be mistaken. It means 'within four days after this happened.' See Vol. I. Verr. ii. 2. c. 15.—'Volaterras:' Volaterrae, now Volterra in Etruria, is situated on the flat top of a high hill, the ascent to which is difficult. Here some of the Etruscans and of the proscribed were blockaded for two years, and were allowed to go out on terms (Strabo, p. 223).

Ne diutius teneam,] 'Om. *vos* Cdd. multi. Ven.' Orelli. Klotz says that 'ne diutius teneam' is the reading of all the MSS., 'even expressly of five Oxford MSS.;' which is a very absurd way of writing. If it is the reading of all, it is the reading of some. I suspect that he is not telling the truth. It is a trifle: but the 'vos' is better out. K. compares Verr. ii. 1. c. 13, "ne diutius teneam: pecunia &c."

8. *nomen refertur in tabulas*] This is explained by c. 9: "nomen—de tabulis exemptum."—'manceps:' Vol. I. Divin. c. 10.—'despexerit:' the context shows what the meaning is. 'Despicere' signifies to look down from an elevation. It seems to mean here, to cast the eyes down, on the ground we may suppose, instead of looking up and around; to relax our vigilance. 'Circumspicere' on the contrary expresses the exercise of vigilance.—'felix:' Sulla prided himself on his Good Fortune, which is a part of a man's greatness. "When the triumph was over, Sulla before the assembled people gave an account of all the events of his life, mentioning with equal particularity his good fortune and his great deeds, and in conclusion he bade them salute him by the name of Eutyches, for this is the nearest word to express the Latin Felix" (Plutarch, Sulla, c. 34, and De Fortuna Populi Romani, c. 4).

que aucupentur ut, simulatque ille despexerit, aliquid hujuscemodi moliantur. Huc accedit quod, quamvis ille felix sit, sicut est, tamen in tanta felicitate nemo potest esse in magna familia qui neminem neque servum neque libertum improbum habeat. Interea iste T. Roscius, vir optimus, procurator Chrysogoni, Ameriam venit: in praedia hujus invadit: hunc miserum, luctu perditum, qui nondum etiam omnia paterno funeri justa solvisset, nudum ejicit domo atque focis patriis Diisque penatibus praecipitem, judices, exturbat: ipse amplissimae pecuniae fit dominus. Qui in sua re fuisset egentissimus, erat, ut fit, insolens in aliena. Multa palam domum suam auferebat; plura clam de medio removebat; non pauca suis adjutoribus large effuseque donabat; reliqua constituta auctione vendebat. IX. Quod Amerinis usque eo visum est indignum ut urbe tota fletus gemitusque fieret. Etenim multa simul ante oculos versabantur; mors hominis florentissimi Sex. Roscii crudelissima; filii autem ejus egestas indignissima, cui de tanto patrimonio praedo iste nefarius ne iter quidem ad sepulcrum patrium reliquisset; bonorum emptio flagitiosa, flagitiosa possessio, furta, rapinae, donationes. Nemo erat qui non ardere omnia mallet quam videre in Sex. Roscii viri optimi atque honestissimi bonis jactantem se ac dominantem T. Roscium. Itaque decurionum decretum statim fit ut decem primi proficiscantur ad L. Sullam

ejicit] Klotz has 'ejecit,' which, he says, is the reading of nearly all the MSS., and, if it is, I should prefer it. He also writes 'penatibus praecipitem Sextum, judices, &c;' as to 'Sextum' he says that the word 'is either found expressly in the MSS., or that there are at least sure traces of it.' And he shows the rhetorical effect of the introduction of the name 'Sextum' here; which appears to me to be a very bad effect. But tastes differ. I have no great confidence in the accuracy of a man who says in his Preface that he writes 'hunc miserum, hunc perditum, qui &c.;' when in his text he writes 'hunc miserum, luctu perditum, qui &c.'

pecuniae:] Vol. I. Verr. ii. 2. c. 25. It means what we call an estate, a property.

9. *iter ad sepulcrum*] The Romans paid great respect to the burying places of their ancestors; and it was usual when they sold any land where their kinsfolk were buried, to reserve a right of road (iter), as we see from Pomponius (Dig. 47. 12. 5): "legibus (the terms) namque praediorum vendendorum cavetur ut ad sepulcra quae in fundis sunt iter eis, aditus, ambitus funeris faciendi sit." Compare Dig. 19. 1. 53, which does not contradict the other passage, as Klotz well observes. If this property of S. Roscius was sold without the usual reservation, he lost his right of road to his ancestors' graves.

flagitiosa] Lambinus says that this word is repeated in the Codex Memmianus. There is no other authority for it. The rhetorical effect seems to justify it; but Klotz, who is master of the art rhetorical, has only one 'flagitiosa.'

ardere omnia] This may be explained by such expressions as 'ardet Syria bello,' 'furor quo nunc omnia ardent' (Liv. ii. 29), and other examples in Forcellini.

decurionum] The 'decuriones' were the Senators of Ameria, for these Italian towns had their Senate as Rome had; and this town constitution, with some modifications, existed under the Empire, and exists still in most parts of Roman Europe (Dig. 50. Tit. 2, De Decurionibus). The 'decem primi' were not named for this occasion as Manutius supposes. Caesar (B.C. i. 35) speaks of the 'xv primi' of the state of Massilia.

doceantque eum qui vir Sex. Roscius fuerit; conquerantur de istorum scelere et injuriis; orent ut et illius mortui famam et filii innocentis fortunas conservatas velit. Atque ipsum decretum, quaeso, cognoscite. DECRETUM DECURIONUM. Legati in castra veniunt. Intelligitur, judices, id quod jam ante dixi, imprudente L. Sulla scelera haec et flagitia fieri. Nam statim Chrysogonus et ipse ad eos accedit et homines nobiles allegat iis qui peterent ne ad Sullam adirent, et omnia Chrysogonum quae vellent esse facturum pollicerentur. Usque adeo autem ille pertimuerat ut mori mallet quam de his rebus Sullam doceri. Homines antiqui qui ex sua natura ceteros fingerent, quum ille confirmaret sese nomen Sex. Roscii de tabulis exempturum, praedia vacua filio traditurum, quumque id ita futurum T. Roscius Capito, qui in X legatis erat, appromitteret, crediderunt; Ameriam re inorata reverterunt. Ac primo rem differre quotidie ac procrastinare isti coeperunt; deinde aliquanto lentius; nihil agere, atque deludere: postremo, id quod facile intellectum est, insidias vitae hujusce Sex. Roscii parare, neque sese arbitrari posse diutius alienam pecuniam domino incolumi obtinere. X. Quod is simul atque sensit, de amicorum cognatorumque sententia Romam confugit et sese ad Caeciliam, Nepotis filiam, quam honoris caussa nomino, contulit, qua pater usus erat plurimum; in qua muliere, judices, etiam nunc, id quod omnes semper existimaverunt, quasi exempli caussa vestigia antiqui officii remanent. Ea Sex. Roscium inopem, ejectum domo atque expulsum ex suis bonis, fugientem latronum tela et minas recepit domum, hospitique oppresso jam desperatoque ab omnibus opitulata est. Ejus virtute, fide, diligen-

These Ten and Fifteen were a smaller body, chosen out of the larger, by the 'decuriones' themselves, as I assume, for the management of business.

allegat iis] This word contains the same root as 'legare,' 'legatus,' and is explained by the examples in Forcellini. 'Allegare' is to give a commission to persons, or to send them somewhere with a commission or instructions. See Verr. i. 1. c. 57: "petit a me Rabonius et amicos allegat."

homines antiqui] Men of the old time, simple-minded, as they always were. So it is supposed.—'appromitteret:' 'adpromisor' is a word of like meaning with 'adstipulator' (Pro P. Quintio, c. 19, note). Here it has its simple meaning, 'to promise also;' but it has a technical meaning (Dig. 45. 1. 5. § 2: "satis acceptio est stipulatio quae ita obligat promissorem, ut adpromissores quoque ab eo accipiantur, id est qui idem promittant").

10. *Nepotis filiam*] She is called in c. 50, "Caecilia Balearici filia, Nepotis sorore." There is, perhaps, some error in the text here. According to the other passage, she was the daughter of Q. Caecilius Metellus Balearicus, and the sister of Q. Caecilius Metellus Nepos. But it has been suggested that Caecilia was the daughter of Q. Caecilius Metellus Nepos, who was consul in B.C. 98; and further, that this was Sulla's wife Caecilia Metella; but this is doubtful, or rather it seems not to be so.

desperatoque] Caesar (B. G. vii. 3) uses this word. He speaks of desperate men (desperatis hominibus), men who had no hopes, and would venture any thing. It may also mean men about whom nobody has any hope, as it means here.—'parricidio:' Vol. I. Verr. ii. 5. c. 66.

tia factum est ut hic potius vivus in reos quam occisus in proscriptos referretur. Nam postquam isti intellexerunt summa diligentia vitam Sex. Roscii custodiri neque sibi ullam caedis faciundae potestatem dari, consilium ceperunt plenum sceleris et audaciae, ut nomen hujus de parricidio deferrent, ut ad eam rem aliquem accusatorem veterem compararent, qui de ea re posset dicere aliquid in qua re nulla subesset suspicio; denique ut, quoniam crimine non poterant, tempore ipso pugnarent. Ita loqui homines: quod judicia tam diu facta non essent, condemnari eum oportere qui primus in judicium adductus esset: huic autem patronos propter Chrysogoni gratiam defuturos; de bonorum venditione et de ista societate verbum esse facturum neminem: ipso nomine parricidii et atrocitate criminis fore ut hic nullo negotio tolleretur, quum ab nullo defensus esset. Hoc consilio atque adeo hac amentia impulsi, quem ipsi quum cuperent non potuerunt occidere, eum jugulandum vobis tradiderunt.

XI. Quid primum querar, aut unde potissimum, judices, ordiar, aut quod aut a quibus auxilium petam? Deorumne immortalium, populine Romani, vestramne, qui summam potestatem habetis, hoc tempore fidem implorem? Pater occisus nefarie, domus obsessa, ab inimicis bona adempta, possessa, direpta, filii vita infesta, saepe ferro atque insidiis appetita. Quid ab his tot maleficiis sceleris abesse videtur? Tamen haec aliis nefariis cumulant atque adaugent; crimen incredibile confingunt; testes in hunc et accusatores hujusce pecunia comparant; hanc conditionem misero ferunt, ut optet utrum malit cervices Roscio dare, an insutus in culeum per summum dedecus vitam amittere. Patronos huic defuturos putaverunt: desunt. Qui libere dicat, qui cum fide defendat, id quod in hac caussa est satis, [quoniam quidem suscepi,] non deest pro-

11. *infesta,*] This word is here used in its proper, passive sense, 'attacked,' of which there are other examples in Cicero.

ut optet] 'ut optetur:' Klotz, who says that all the MSS. have 'optetur.'—'cervices dare:' 'offer his neck' to this gladiator, T. Roscius Magnus, as he has called him. Klotz has added after 'culeum' the words 'supplicium parricidarum,' for which there is authority; but neither he nor his authorities move me in this matter. His explanation of the words is puerile. To be sewed up in a sack with very unpleasant company, and cast into the sea was the punishment of parricides (c. 25). The passages which relate to this punishment are collected by Rein, Das Criminalrecht der Römer, p. 457. Modestinus (Dig. 48. 9. 9) has preserved the record of this antient punishment: "Poena parricidii more majorum haec instituta est, ut parricida virgis sanguineis verberatus deinde culleo insuatur cum cane, gallo gallinaceo, et vipera, et simia, deinde in mare profundum culleus jactetur."

quoniam quidem suscepi,] I assume that these words are in all the MSS., but some editors have struck them out, and others have placed them in []. Klotz, who retains the words in his text, says that those who struck out these words, mistook the whole meaning of the passage, for so far are the following words, 'quoniam quidem semel suscepi,' from making the previous

fecto, judices. Et forsitan in suscipienda caussa temere impulsus adolescentia fecerim; quoniam quidem semel suscepi, licet hercules undique omnes in me terrores periculaque impendeant omnia, succurram atque subibo. Certum est deliberatumque, quae ad caussam pertinere arbitror, omnia non modo dicere, verum etiam libenter, audacter libereque dicere. Nulla res tanta existet, judices, ut possit vim mihi majorem adhibere metus quam fides. Etenim quis tam dissoluto animo est qui haec quum videat tacere ac negligere possit? Patrem meum, quum proscriptus non esset, jugulastis: occisum in proscriptorum numerum rettulistis: me domo mea per vim expulistis: patrimonium meum possidetis. Quid vultis amplius? Etiamne ad subsellia cum ferro atque telis venistis ut hic aut juguletis aut condemnetis Sex. Roscium? XII. Hominem longe audacissimum nuper habuimus in civitate C. Fimbriam, et, quod inter omnes constat nisi inter eos qui ipsi quoque insaniunt, insanissimum. Is quum curasset in funere C. Marii ut Q. Scaevola vulneraretur, vir sanctissimus atque ornatissimus nostrae civitatis: de cujus laude neque hic locus est ut multa dicantur, neque plura tamen dici possunt quam populus Romanus memoria retinet:—diem Scaevolae dixit, posteaquam comperit eum posse vivere. Quum ab eo quaereretur quid tandem accusaturus esset eum, quem pro dignitate ne laudare quidem quisquam satis commode posset; aiunt hominem, ut erat furiosus, respondisse, quod non totum telum corpore recepisset. Quo populus Romanus nihil vidit indignius nisi ejusdem viri mortem, quae tantum potuit

words suspected, that they cannot do without the previous words, 'quoniam quidem suscepi,' as their proper point of support.

12. *C. Fimbriam,—Q. Scaevolae*] This story, if it is true, shows that Fimbria was a fool or a madman. After the death of C. Marius (B. C. 86) he accompanied L. Valerius Flaccus into Asia, to carry on the war against Mithridates. He murdered his own commander, and then conducted the war against Mithridates, till Sulla crossed over the Hellespont to punish him. Fimbria, who was encamped near Thyatira, being betrayed by his own soldiers, made his escape, and committed suicide in a temple at Pergamus. (Appian, Bell. Mithrid. c. 59, 60. Plutarch, Sulla, 23—25.)

Q. Mucius Scaevola is the illustrious Roman who was Pontifex Maximus, and a learned jurist. Cicero heard him when he was a youth (De Am. c. 1). It was a few years after this attack, and in the consulship of Carbo and the younger Marius (B.C. 82) that Scaevola lost his life while he was attempting to reconcile the two factions. He was assassinated by the Marian faction, before the altar of Vesta, where he had fled for refuge (De Or. iii. 3); the most scandalous act of this stormy period of Rome's history.—'servare per compositionem' may be compared with 'ut componerentur,' c. 47.—'diem—dixit.' This is the Roman phrase, which expresses the fact of a magistratus prosecuting a man. It is properly only the Tribuni Plebis, says Manutius, 'qui diem dicunt;' but this is not proved by two examples only. See Vol. I. Divin. c. 20.—'omnes cives suos:', a difficulty has been made about this, but it seems plain. Some critics would exclude 'suos.' Klotz prints 'omnis (that is 'omnes') occisus,' which, whether we view it rhetorically or in any other way, is a most feeble, miserable form of expression.

ut omnes cives suos perdiderit et afflixerit: quos quia servare per compositionem volebat, ipse ab iis interemptus est. Estne hoc illi dicto atque facto Fimbriano simillimum? Accusatis Sex. Roscium. Quid ita? quia de manibus vestris effugit: quia se occidi passus non est. Illud quia in Scaevola factum est magis indignum videtur; hoc, quia fit a Chrysogono, num est ferendum? Nam per Deos immortales, quid est in hac caussa quod defensionis indigeat? qui locus ingenium patroni requirit aut oratoris eloquentiam magno opere desiderat? Totam caussam, judices, explicemus atque ante oculos expositam consideremus: ita facillime quae res totum judicium contineat et quibus de rebus nos dicere oporteat et quid vos sequi conveniat intelligetis. XIII. Tres sunt res, quantum ego existimare possum, quae obstent hoc tempore Sex. Roscio; crimen adversariorum et audacia et potentia. Criminis confictionem accusator Erucius suscepit: audaciae partes Roscii sibi poposcerunt: Chrysogonus autem, is qui plurimum potest, potentia pugnat. De hisce omnibus rebus me dicere oportere intelligo. Quid igitur est? Non eodem modo de omnibus; ideo quod prima illa res ad meum officium pertinet; duas autem reliquas vobis populus Romanus imposuit. Ego crimen oportet diluam: vos et audaciae resistere et hominum ejusmodi perniciosam atque intolerandam potentiam primo quoque tempore exstinguere atque opprimere debetis.

Occidisse patrem Sex. Roscius arguitur. Scelestum, Dii immortales, ac nefarium facinus, atque ejusmodi quo uno maleficio scelera omnia complexa esse videantur. Etenim si id quod praeclare a sapientibus dicitur, vultu saepe laeditur pietas, quod supplicium satis acre reperietur in eum qui mortem obtulerit parenti, pro quo mori ipsum, si res postularet, jura divina atque humana cogebant? In hoc tanto, tam atroci, tam singulari maleficio, quod ita raro exstitit ut, si quando auditum sit, portenti ac prodigii simile numeretur, quibus tandem te, C. Eruci, argumentis accusatorem censes uti oportere? Nonne et audaciam ejus qui in crimen vocetur singularem ostendere, et mores feros immanemque naturam, et vitam vitiis flagitiisque omnibus deditam, et denique omnia ad perniciem

Estne hoc, &c.] 'Is not this?' See Pro P. Quintio, c. 20. Klotz has 'non simillimum.'

13. *Quid igitur est?*] Sometimes he says 'Quid ergo est,' as in Pro P. Quintio, c. 2.—'pietas:' 'duty to parents.' "Justitia erga deos religio, erga parentes pietas nominatur" (Or. Part. 22).—'prodigii simile:' Vol. I. Verr. ii. 2. c. 65.—'objiciendi caussa:' see what follows, c. 14, "ut ipse accusator objecit;" and c. 19, "atque id objicere quod planum facere non modo non possis, verum ne coneris quidem;" and c. 29.

profligata atque perdita? Quorum tu nihil in Sex. Roscium ne objiciendi quidem caussa contulisti.

XIV. Patrem occidit Sex. Roscius. Qui homo? Adolescentulus corruptus et ab hominibus nequam inductus? Annos natus major quadraginta. Vetus videlicet sicarius, homo audax et saepe in caede versatus. At hoc ab accusatore ne dici quidem audistis. Luxuries igitur hominem nimirum et aeris alieni magnitudo et indomitae animi cupiditates ad hoc scelus impulerunt. De luxuria purgavit Erucius quum dixit hunc ne in convivio quidem ullo fere interfuisse. Nihil autem umquam debuit. Cupiditates porro quae possunt esse in eo, qui, ut ipse accusator objecit, ruri semper habitarit et in agro colendo vixerit? quae vita maxime disjuncta a cupiditate est, et cum officio conjuncta. Quae res igitur tantum istum furorem Sex. Roscio objecit? Patri, inquit, non placebat. Patri non placebat? quam ob caussam? Necesse est enim eam quoque justam et magnam et perspicuam fuisse. Nam ut illud incredibile est mortem oblatam esse patri a filio sine plurimis et maximis caussis, sic hoc verisimile non est odio fuisse parenti filium sine caussis multis et magnis et necessariis. Rursus igitur eodem revertamur et quaeramus quae tanta vitia fuerint in unico filio quare is patri displiceret. At perspicuum est nullum fuisse. Pater igitur amens qui odisset eum sine caussa quem procrearat. At is quidem fuit omnium constantissimus. Ergo illud jam perspicuum profecto est, si neque amens pater neque perditus filius fuerit, neque odii caussam patri neque sceleris filio fuisse. XV. Nescio, inquit, quae caussa odii fuerit; fuisse odium intelligo: quia antea, quum duos filios haberet, illum alterum qui mortuus est secum omni tempore volebat esse, hunc in praedia rustica relegarat. Quod Erucio accidebat in mala nugatoriaque accusatione, idem mihi usu venit in caussa optima. Ille quomodo crimen commentitium confirmaret non inveniebat; ego res tam leves qua ratione infirmem ac diluam reperire non possum. Quid ais, Eruci? Tot praedia tam pulchra, tam fructuosa Sex. Roscius filio suo relegationis ac supplicii gratia colenda ac tuenda tradiderat? Quid hoc?

14. *Annos natus*] Most of the MSS., as Orelli admits, have 'Annos natus major quadraginta,' and yet he has 'annis major quadraginta,' as Graevius would have it. But Klotz has well maintained the MSS. reading. He refers to Gellius (1. 12): "minorem quam annos VI majorem quam annos X natam negaverunt capi fas esse;" which differs only from the passage of Cicero, in having 'quam.' There is another like passage in Livy xlv. 52.

15. *usu venit*] 'Came by experience,' that is, in fact it so happened, so turned out. This is also one of Caesar's expressions (B. G. vii. 9). See De Sen. c. 3, and Terence, Phormio, i. 2. 24.

Patresfamilias qui liberos habent, praesertim homines illius ordinis ex municipiis rusticanis, nonne optatissimum sibi putant esse filios suos rei familiari maxime servire, et in praediis colendis operae plurimum studiique consumere? An amandarat hunc sic ut esset in agro ac tantummodo aleretur ad villam, ut commodis omnibus careret? Quid si constat hunc non modo colendis praediis praefuisse, sed certis fundis patre vivo frui solitum esse? tamenne haec attenta vita et rusticana relegatio atque amandatio appellabitur? Vides, Eruci, quantum distet argumentatio tua ab re ipsa atque a veritate. Quod consuetudine patres faciunt, id quasi novum reprehendis; quod benevolentia fit, id odio factum criminaris; quod honoris caussa pater filio suo concessit, id eum supplicii caussa fecisse dicis. Neque haec tu non intelligis; sed usque eo quid arguas non habes ut non modo tibi contra nos dicendum putes, verum etiam contra rerum naturam, contraque consuetudinem hominum contraque opiniones omnium. XVI. At enim quum duos filios haberet, alterum a se non dimittebat, alterum ruri esse patiebatur. Quaeso, Eruci, ut hoc in bonam partem accipias; non enim exprobrandi caussa sed commonendi gratia dicam. Si tibi fortuna non dedit ut patre certo nascerere, ex quo intelligere posses qui animus patrius in liberos esset; at natura certe dedit ut humanitatis non parum haberes; eo accessit studium doctrinae ut ne a litteris quidem alienus esses. Ecquid tandem tibi videtur, ut ad fabulas veniamus, senex ille Caecilianus minoris facere Eutychum

ad villam,] This word is sometimes written 'Vila.' To be 'in agro' is to live 'in the country;' and 'ad villam' is 'at the country house.' Klotz compares the oration Pro M. Tullio (§ 20): "servis respondit dominum esse ad villam;" and "ad villam erat Tullius." Varro (L. L. v. 35) gives the derivation of 'villa,' but it is not one that we can accept. The Dig. 50. tit. 16, 'De Verborum significationibus,' contains in 27, 115, 211, definitions of 'ager,' 'fundus,' 'villa,' &c.: "Fundi appellatione omne aedificium et omnis ager continetur; sed in usu urbana aedificia aedes, rustica villae dicuntur. Locus vero sine aedificio in urbe area, rure autem ager appellatur. Idemque ager cum aedificio fundus dicitur." (Florentinus.)

attenta vita] 'Frugal, industrious life,' the word expressing a continuous effort. Horace has (Ep. i. 7. 91):

"Durus ait, Vultei, nimis attentusque videris
Esse mihi."

In the oration Pro P. Quintio, c. 3: "paterfamilias et prudens et attentus."

16. *At enim*] A supposed objection of Erucius. 'At' is an answer to an objection, of which there are instances in c. 14. See Vol. I. Verr. ii. 1. c. 9, 'Causam enim;' and the Index, 'At enim.'

patre certo] This is Cicero's fashion. He reproaches the man with having a mother who could not tell him who his father was. The Romans gave the name of Spurii to those children who had no legal father: "quales sunt ii quos mater vulgo concepit; *nam et hi* patrem habere *non* intelliguntur, cum *pater* incertus sit." (Gaius i. § 64.)

Caecilianus] Cicero often quotes Caecilius Statius, a Roman writer of comedy, whose death is said to be fixed at B. C. 168, or two years before the Andria of Terence was acted, according to Suetonius (Vit. Terent.), but there is no proof of this date there. Caecilius is often mentioned by the Roman writers, and though we cannot judge of a play writer by specimens of a few lines, many of the lines which are preserved are

filium rusticum quam illum alterum Chaerestratum? nam, ut opinor, hoc nomine est; alterum in urbe secum honoris caussa habere, alterum rus supplicii caussa relegasse? Quid ad istas ineptias abis? inquies. Quasi vero mihi difficile sit quamvis multos nominatim proferre, ne longius abeam, vel tribules vel vicinos meos, qui suos liberos, quos plurimi faciunt, agricolas assiduos esse cupiunt. Verum homines notos sumere odiosum est, quum et illud incertum sit, velintne hi sese nominari; et nemo vobis magis notus futurus sit quam est hic Eutychus: et certe ad rem nihil intersit utrum hunc ego comicum adolescentem an aliquem ex agro Veiente nominem. Etenim haec conficta arbitror a poetis esse ut effictos nostros mores in alienis personis expressamque imaginem nostrae vitae quotidianae videremus. Age nunc, refer animum, sis, ad veritatem, et considera, non modo in Umbria atque in ea vicinitate, sed in his veteribus municipiis quae studia a patribusfamilias maxime laudentur: jam profecto te intelliges inopia criminum summam laudem Sex. Roscio vitio et culpae dedisse. XVII. At non modo hoc patrum voluntate liberi faciunt; sed permultos et ego novi, et, nisi me fallit animus, unus quisque vestrum, qui et ipsi incensi sunt studio quod ad agrum colendum attinet, vitamque hanc rusticam, quam tu probro et crimini putas esse oportere, et honestissimam et suavissimam esse arbitrantur. Quid censes hunc ipsum Sex. Roscium, quo studio et qua intelligentia esse in rusticis

good. Horace (Ep. ii. 1. 59) has given one characteristic of Caecilius:

"Vincere Caecilius gravitate, Terentius arte."

—'ad istas ineptias abis?' 'Why do you fly off to this trifling of yours?' Erucius is supposed to say.

velintne hi sese nominari;] Hence we see why he says 'honoris caussa nomino.' Men don't like to have their names freely used in public, at least men of any merit do not. Accordingly, when Cicero mentions the name of a man of rank or merit, he says that the mention is intended to be a mark of respect.—'comicum adolescentem:' Cicero (De Sen. c. 11) quoting Caecilius, speaks of 'comicos senes,' the characters of old men in the comedies.—'sis:' the Terentian form, 'si vis,' 'if you please.'

imaginem nostrae] 'Imaginem nostram:' Klotz; and there is authority for it.

17. *At non modo*] 'At' should be 'Ac,' as it has been suggested. But there is no MSS. authority for 'ac' that I know of. 'At' is out of place here.

Quid censes, &c.] Manutius says that he does not see why some 'homines pereruditi' have suspected an error 'in hoc ambitu verborum;' nor do I. It is one of Cicero's commonest turns. But those who impose on themselves the profitless labour of altering the order of Latin words for the purpose of explaining Latin construction, may find something here that does not suit their notion of the Latin language, a notion founded on their own language however, and, of course, a false notion. It means in English: 'What think you of this man, of him who is here before us, Sextus Roscius? what do you suppose his steadiness and skill in agricultural matters to be?'

This formula of speech is the purest Latin; as in Horace, Ep. i. 6. v. 5:

"Quid censes munera terrae? &c.
Quo spectanda modo, quo sensu credis et ore?"

rebus? Ut ex his propinquis ejus, hominibus honestissimis, audio, non tu in isto artificio accusatorio callidior es quam hic in suo. Verum, ut opinor, quoniam ita Chrysogono videtur, qui huic nullum praedium reliquit, et artificium obliviscatur et studium deponat licebit. Quod tametsi miserum et indignum est, feret tamen aequo animo, judices, si per vos vitam et famam potest obtinere: hoc vero est quod ferri non potest, si et in hanc calamitatem venit propter praediorum bonitatem et multitudinem, et, quod ea studiose coluit, id erit ei maxime fraudi; ut parum miseriae sit quod aliis coluit, non sibi, nisi etiam quod omnino coluit crimini fuerit.

XVIII. Nae tu, Eruci, accusator esses ridiculus, si illis temporibus natus esses quum ab aratro arcessebantur qui consules fierent. Etenim qui praeesse agro colendo flagitium putes, profecto illum Attilium, quem sua manu spargentem semen qui missi erant convenerunt, hominem turpissimum atque inhonestissimum judicares. At hercule majores nostri longe aliter et de illo et de ceteris talibus viris existimabant. Itaque ex minima tenuissimaque re publica maximam et florentissimam nobis reliquerunt. Suos enim agros studiose colebant; non alienos cupide appetebant: quibus rebus et agris et urbibus et nationibus rem publicam atque hoc imperium et populi Romani nomen auxerunt. Neque ego haec eo profero quo conferenda sint cum hisce de quibus nunc quaerimus; sed ut illud intelligatur, quum apud majores nostros summi viri clarissimique homines, qui omni tempore ad gubernacula rei publicae sedere debebant, tamen in agris quoque colendis aliquantum operae temporisque consumpserint, ignosci oportere ei homini qui se fateatur esse rusticum, quum ruri assiduus semper vixerit; quum praesertim nihil esset quod aut patri gratius aut sibi jucundius aut re vera honestius facere posset. Odium igitur acerrimum patris in filium ex hoc, opinor, ostenditur, Eruci, quod hunc ruri esse patiebatur.

18. *qui—putes,*] Anybody may understand the Latin subjunctive, if he will read carefully; but a remark may now and then help him. No modern language, that I know, has any thing so flexible, and so nice in its use as the Roman subjunctive. 'Qui putas' here would be quite a different thing, or rather it would have no meaning at all. "For if you think it a disgrace to look after the cultivation of land, you would, of course, have considered the great Atilius a very mean and a very low kind of fellow." A like story of the illustrious old Roman, Cincinnatus, is told elsewhere (De Sen. c. 16).

The Romans taught western Europe two things in which they were masters, agriculture and the art of war. Perhaps there is no part of Europe now in which we should find better cultivated farms than those of an old Roman, unless, it may be, in some parts of France and Belgium. The Romans have left us writings on agriculture, which are still valuable. Columella, in the beautiful introduction to his work on agriculture, laments the decay of the old Roman manners: "cum tot alios Romani generis intuear memorabiles duces hoc semper duplici studio floruisse vel defendendi vel colendi patrios quaesitosve fines, intelligo luxuriae et deliciis nostris pristinum morem virilemque vitam displicuisse" (§ 14).

Numquid est aliud? Immo vero, inquit, est; nam istum exheredare in animo habebat. Audio: nunc dicis aliquid quod ad rem pertineat; nam illa, opinor, tu quoque concedis levia esse atque inepta. Convivia cum patre non inibat. Quippe qui ne in oppidum quidem nisi perraro veniret. Domum suam istum non fere quisquam vocabat. Nec mirum qui neque in Urbe viveret neque revocaturus esset. XIX. Verum haec quoque tu intelligis esse nugatoria. Illud quod coepimus videamus, quo certius argumentum odii reperiri nullo modo potest. Exheredare pater filium cogitabat. Mitto quaerere qua de caussa: quaero qui scias: tametsi te dicere atque enumerare caussas omnes oportebat; et id erat certi accusatoris officium qui tanti sceleris argueret, explicare omnia vitia atque peccata filii, quibus incensus parens potuerit animum inducere ut naturam ipsam vinceret, ut amorem illum penitus insitum ejiceret ex animo, ut denique patrem esse sese oblivisceretur: quae sine magnis hujusce peccatis accidere potuisse non arbitror. Verum concedo tibi ut ea praetereas, quae quum taces nulla esse concedis. Illum quidem voluisse exheredare certe tu planum facere debes. Quid ergo affers quare id factum putemus? Vere nihil potes dicere. Finge aliquid saltem commode, ut ne plane videaris id facere quod aperte facis, hujus miseri fortunis et horum virorum talium dignitati illudere. Exheredare filium voluit. Quam ob caussam? Nescio. Exheredavitne? Non. Quis prohibuit? Cogitabat. Cogitabat: cui dixit? Nemini. Quid est aliud judicio

exheredare] A Roman had full testamentary power over his property, but if he wished not to give any of it to a child, he must declare his will; he must disinherit him, as we say, by name. "Item qui filium in potestate habet, curare debet ut eum vel heredem instituat vel nominatim exheredet: alioquin si eum silentio praeterierit, inutiliter testabitur." (Gaius ii. § 123.) If the father simply omitted to mention the child, intending to give him nothing, the will was void. This wise rule of law has not been adopted by us, though we have taken so much from the Roman law, and particularly from the law of Testaments. If a father in England gives all by his will to a stranger, and never mentions his children, there is nothing for them. —'audio:' see Verr. ii. 5. c. 27.

neque revocaturus] This reading is, perhaps, not quite certain. Gruter says that he rescued it 'ex Orci cancellis,' a strange place to find it in; and he adds that it is confirmed by all the 'Pall.' MSS. The other readings seem to be 'neque rure vocaturus,' and perhaps 'rus vocaturus,' which seems to mean 'neque rursum revocaturus,' or 'neque rursus vocaturus.' If the text is not Cicero's own expression, it is certainly Latin, as Graevius shows by quoting Phaedrus (i. 25), and Martial, Ep. iii. 27:

"Nunquam me revocas, venias quum saepe vocatus:
Ignosco, nullum si modo, Galle, vocas."

19. *certi accusatoris*] Hotmann supposes that this means an accusator, who is 'doctus et exercitatus.' But Graevius has explained it right. It is 'fide dignus, cui merito credas.' See Pro P. Quintio, c. 3, "certus paterfamilias." This word is also used for 'certain,' in the sense of 'definite;' but I am now inclined to think that it means 'trustworthy' in the passage of the Verrine orations. (Vol. I. Verr. ii. 2. c. 39.) Compare σαφής, Oed. Col. v. 622; and c. 22 of this oration, 'testis incertus.'

ac legibus ac majestate vestra abuti ad quaestum atque ad libidinem, nisi hoc modo accusare, atque id objicere quod planum facere non modo non possis, verum ne coneris quidem? Nemo nostrum est, Eruci, quin sciat tibi inimicitias cum Sex. Roscio nullas esse. Vident omnes qua de caussa huic inimicus venias. Sciunt hujusce pecunia te adductum esse. Quid ergo est? Ita tamen quaestus te cupidum esse oportebat ut horum existimationem et legem Remmiam putares aliquid valere oportere. XX. Accusatores multos esse in civitate utile est, ut metu contineatur audacia: verumtamen hoc ita est utile ut ne plane illudamur ab accusatoribus. Innocens est quispiam. Verumtamen, quamquam abest a culpa, suspicione tamen non caret. Tametsi miserum est, tamen ei qui hunc accuset possim aliquo modo ignoscere. Quum enim aliquid habeat quod possit criminose ac suspiciose dicere, aperte ludificari et calumniari sciens non videatur. Quare facile omnes patimur esse quam plurimos accusatores; quod innocens, si accusatus sit, absolvi potest; nocens, nisi accusatus fuerit, condemnari non potest. Utilius est autem absolvi innocentem quam nocentem caussam non dicere. Anseribus cibaria publice locantur, et canes aluntur in

Remmiam] There is some uncertainty as to the reading, for this Lex is sometimes named Memmia (Val. Max. iii. 7. § 9). But it appears that the name is Remmia. It was a Lex for the punishment of 'calumniatores,' and this is the chief passage about it. 'Calumniari' is explained Vol. I. Verr. ii. 1. c. 10. Marcianus (Dig. 48. 16. 1) mentions the penalty on 'calumniatores' being fixed by the Lex Remmia. It is alluded to by Cicero (c. 20). The 'calumniator' might be branded with K, the initial letter of Kalumnia, when properly written.

20. *Anseribus cibaria*] The cackling of the geese which woke the Romans saved the Capitol from a surprise by the Galli. The dogs slept (Liv. v. 47). The geese were properly rewarded for their services. It was the business of the censors to make the contract for the maintenance of the geese: it was a duty which they particularly attended to, one of the first things that they did (Plin. N. H. x. 22). This is the meaning of 'cibaria publice locantur,' or, as Pliny has it, "cibaria anserum censores in primis locant." 'Cibaria' is a maintenance, an allowance.

Plutarch (De Fortuna Pop. Rom. c. 12) speaks of a Roman procession in memory of these things, even in his time. A dog was represented on a cross; but a goose appeared reclining in solemn state on a costly couch and a litter. Pliny (N. H. xxix. 4) says that dogs were annually executed between the temple of Juventas and Summanus, by being impaled alive.

canes aluntur — crura suffringantur,] There is a curious note by Lambinus on this passage, which is good enough in the matter, but ridiculous in the form. It is the gravity of his defence of Cicero which is ridiculous. The story of the dogs in the Capitol, and their neglect of duty, led Hotmann to the belief that Cicero was lying when he said 'canes aluntur.' If no dogs were kept in the Capitol in Cicero's time, he must have lost his wits when he wrote this passage, which though not very effective, even if dogs were kept in the Capitol, would be the absurdest thing in the world, if they were not. This worthy commentator, whose knowledge was of the narrowest kind, hardly seems to know that dogs are better watchers than geese, for though a goose may be as easily roused as a dog, and make as much noise, he cannot be so conveniently kept in every place as a dog can; and besides, he does not bite. How came he to overlook a passage of the learned Varro (De R. R. iii. 10), that the goose is not satisfied with 'any villa, or any land?'—it requires a pond too. He might have raised on this an argument against the story of the geese in the Capitol.

Capitolio ut significent si fures venerint. At fures internoscere non possunt. Significant tamen si qui noctu in Capitolium venerint; et quia id est suspiciosum, tametsi bestiae sunt, tamen in eam partem potius peccant quae est cautior. Quod si luce quoque canes latrent, quum Deos salutatum aliqui venerint, opinor, iis crura suffringantur, quod acres sint etiam tum quum suspicio nulla sit. Simillima est accusatorum ratio. Alii vestrum anseres sunt, qui tantummodo clamant, nocere non possunt: alii canes, qui et latrare et mordere possunt. Cibaria vobis praeberi videmus: vos autem maxime debetis in eos impetum facere qui merentur. Hoc populo gratissimum est. Deinde si voletis etiam tum, quum verisimile erit aliquem commisisse, in suspicione latratote: id quoque concedi potest. Sin autem sic agetis ut arguatis aliquem patrem occidisse, neque dicere possitis aut quare aut quomodo, ac tantummodo sine suspicione latrabitis; crura quidem vobis nemo suffringet, sed si ego hos bene novi, litteram illam, cui vos usque eo inimici estis, ut etiam Kal. omnes oderitis, ita vehementer ad caput affigent ut postea neminem alium nisi fortunas vestras accusare possitis. XXI. Quid mihi ad defendendum dedisti, bone accusator? quid hisce autem ad suspicandum? Ne exheredaretur veritus est. Audio. Sed qua de caussa vereri debuerit nemo dicit. Habebat pater in animo. Planum fac. Nihil est; non quicum deliberarit, quem certiorem fecerit, unde istud vobis suspicari in mentem venerit. Quum hoc modo accusas, Eruci, nonne hoc palam dicis? ego quid acceperim scio, quid dicam nescio: unum illud spectavi, quod Chrysogonus aiebat, neminem isti patronum futurum; de bonorum emptione deque ea societate neminem esse qui verbum facere hoc tempore auderet. Haec te opinio falsa in istam fraudem impulit. Non mehercule verbum fecisses, si tibi

Lambinus maintains that there were dogs in the Capitol. Those dogs, he says, which did not do their duty there in the Gallic war, were certainly punished; and it is satisfactory to know this, for they deserved it: but nevertheless, dogs were kept in the capitol in Cicero's time, and better dogs, we will suppose; for the dog is an animal suited to be a watchman.

Lambinus defends 'crura frangantur' against a proposed emendation 'cruci suffigantur.' The Romans, it has been said, used to break the limbs of crucified men; and if this is true, 'crura suffringere' may imply crucifixion. Yet there is only one instance of breaking the legs on the cross (St. John xix. 31), and this does not prove the practice, as Lipsius shows (De Cruce, ii. 14). The Romans used 'frangere crura,' 'effringere crura,' and 'defringere,' to express killing à person in a cruel way, or maiming him at least. It was as common as our phrase to 'break a man's neck,' which is derived from the practice of hanging. Gruter defends 'suffringantur' against Lambinus, who thinks that 'frangantur' is the word; and also adds that we must not suppose that the dogs really had their legs broken; but leg-breaking (crurifragium) was the expression in a Roman's mouth when he threatened mischief.

21. *Nihil est; non*, &c] 'There is nothing,' 'he says nothing;' 'he does not say with whom he discussed the matter,' &c.

quemquam responsurum putasses. Operae pretium erat, si animadvertistis, judices, negligentiam ejus in accusando considerare. Credo, quum vidisset qui homines in hisce subselliis sederent, quaesisse, num ille aut ille defensurus esset: de me ne suspicatum quidem, quod antea caussam publicam nullam dixerim. Posteaquam invenit neminem eorum qui possunt et solent, ita negligens esse coepit ut, quum in mentem veniret ei, resideret, deinde spatiaretur, nonnumquam etiam puerum vocaret; credo, cui caenam imperaret; prorsus ut vestro consessu et hoc conventu pro summa solitudine abuteretur. XXII. Peroravit aliquando: assedit: surrexi ego. Respirare visus est quod non alius potius diceret. Coepi dicere. Usque eo animadverti, judices, eum jocari atque alias res agere ante quam Chrysogonum nominavi; quem simul atque attigi, statim homo se erexit. Mirari visus est. Intellexi quid eum pupugisset. Iterum ac tertio nominavi. Postea homines cursare ultro et citro non destiterunt; credo, qui Chrysogono nuntiarent esse aliquem in civitate qui contra voluntatem ejus dicere auderet; aliter caussam agi atque ille existimaret; aperiri bonorum emptionem; vexari pessime societatem; gratiam potentiamque ejus negligi; judices diligenter attendere; populo rem indignam videri. Quae quoniam te fefellerunt, Eruci, quoniamque vides versa esse omnia, caussam pro Sex. Roscio, si non commode, at libere dici; quem dedi putabas, defendi intelligis; quos tradituros sperabas, vides judicare; restitue nobis aliquando veterem tuam illam calliditatem atque prudentiam: confitere huc ea spe venisse quod putares hic latrocinium, non judicium futurum. De parricidio caussa dicitur: ratio ab accusatore reddita non est quam ob caussam patrem filius occiderit. Quod in minimis noxiis et in his levioribus peccatis, quae magis crebra et jam prope quotidiana sunt, maxime et primum quaeritur, quae caussa maleficii fuerit, id Erucius in parricidio quaeri non putat

caussam publicam] This was Cicero's first appearance in a 'caussa publica,' a Roman term, which is best explained by the opposition of 'caussa privata,' which is a suit between private persons in which their particular interests only are concerned.

resideret,] 'When he felt inclined, he would sit down; then he would walk about; sometimes even call his slave, to give orders about his supper, I suppose; and so he treated your body, judices, and all the assembled people just as if he were in a perfect desert.'

Hotmann has a good note here. He quotes Quintilian to show that the orators of Rome had a certain space to move about in. They were not fixed to a spot like a modern speaker generally is. The free movement of the body in speaking gives animation to the speaker, and the fixed position takes it away.

22. *alias res agere*] This means 'not to attend to what is in hand.' When we say to a man 'Hoc age,' we tell him to attend.

confitere] Hotmann put 'aut' before 'confitere,' to make 'restitue,' &c. intelligible. I don't clearly understand the passage 'restitue,' &c. Ernesti supposes Cicero to be speaking ironically. He treats Erucius as a fool.

oportere: in quo scelere, judices, etiam quum multae caussae convenisse unum in locum atque inter se congruere videntur, tamen non temere creditur, neque levi conjectura res penditur, neque testis incertus auditur, neque accusatoris ingenio res judicatur. Quum multa antea commissa maleficia, tum vita hominis perditissima, tum singularis audacia ostendatur necesse est; neque audacia solum, sed summus furor atque amentia. Haec quum sint omnia, tamen exstent oportet expressa sceleris vestigia, ubi, qua ratione, per quos, quo tempore maleficium sit admissum. Quae nisi multa et manifesta sunt, profecto res tam scelesta, tam atrox, tam nefaria credi non potest. Magna est enim vis humanitatis: multum valet communio sanguinis: reclamitat istiusmodi suspicionibus ipsa natura: portentum atque monstrum certissimum est, esse aliquem humana specie et figura, qui tantum immanitate bestias vicerit ut, propter quos hanc suavissimam lucem aspexerit, eos indignissime luce privarit; quum etiam feras inter sese partus atque educatio et natura ipsa conciliet. XXIII. Non ita multis ante annis aiunt T. Cloelium quemdam Tarracinensem, hominem non obscurum, quum caenatus cubitum in idem conclave cum duobus adolescentibus filiis isset, inventum esse mane jugulatum. Quum neque servus quisquam reperiretur neque liber ad quem ea suspicio pertineret, id aetatis autem duo filii propter cubantes ne sensisse quidem se dicerent, nomina filiorum de parricidio delata sunt. Quod poterat satis jam esse suspiciosum, neutrum sensisse; ausum autem esse quemquam se in id conclave committere, eo potissimum tempore, quum ibidem essent duo adolescentes filii qui et sentire et defendere facile possent? Erat porro nemo in quem ea suspicio conveniret. Tamen quum planum judicibus esset factum aperto ostio dormientes eos repertos esse, judicio absoluti adolescentes et suspicione omni liberati sunt. Nemo enim putabat quemquam esse, qui quum omnia divina atque humana jura scelere nefario polluisset, somnum statim capere potuisset, propterea quod qui tantum facinus com-

propter quos] If this is right, it means the same as 'per quos.'

23. *T. Cloelium*] It seems doubtful if the name is Cloelius or Caelius, as Valerius Maximus (viii. 1. 13) has it in his collection of stories; but it is Cloelius in Torrenius' edition. Maximus seems to have taken the story from Cicero, who tells it well, as he always does. It is instructive, and an instance of the practical good sense of the Romans.

Quod poterat, &c.] The reading is uncertain. Klotz has it 'Quid poterat sa . . . est suspiciosum autem neutrumne sensisse?' which of course he considers to be a corrupt reading, and leaves as it is. Orelli has this patchwork: 'Quid postea? Erat sane suspiciosum: neutrum sensisse; ausum autem esse,' &c. That which I have given is the reading of the Juntine, which is plain, intelligible, and may be true. At the end of the chapter, Klotz writes 'sine metu possunt.' The reader may exercise his judgment in determining which is right, 'possunt,' or 'possint.' (Orelli.)

miserunt, non modo sine cura quiescere sed ne spirare quidem sine metu possint.

XXIV. Videtisne quos nobis poetae tradiderunt patris ulciscendi caussa supplicium de matre sumpsisse, quum praesertim Deorum immortalium jussis atque oraculis id fecisse dicantur, tamen ut eos agitent furiae neque consistere usquam patiantur; quod ne pii quidem sine scelere esse potuerunt? Sic se res habet, judices. Magnam vim, magnam necessitatem, magnam possidet religionem paternus maternusque sanguis; ex quo si qua macula concepta est, non modo elui non potest, verum usque eo permanat ad animum ut summus furor atque amentia consequatur. Nolite enim putare, quemadmodum in fabulis saepenumero videtis, eos qui aliquid impie scelerateque commiserint, agitari et perterreri Furiarum taedis ardentibus. Sua quemque fraus et suus terror maxime vexat; suum quemque scelus agitat amentiaque afficit; suae malae cogitationes conscientiaeque animi terrent. Hae sunt impiis assiduae domesticaeque Furiae, quae dies noctesque parentum poenas a consceleratissimis filiis repetant. Haec magnitudo maleficii facit ut, nisi paene manifestum parricidium proferatur, credibile non sit, nisi turpis adolescentia, nisi omnibus flagitiis vita inquinata, nisi sumptus effusi cum probro atque dedecore, nisi prorupta audacia, nisi tanta temeritas ut non procul abhorreat ab insania. Accedat huc oportet odium parentis, animadversionis paternae metus, amici improbi, servi conscii, tempus idoneum, locus opportune captus ad eam rem; paene dicam, respersas manus sanguine paterno judices videant oportet, si tantum facinus, tam immane, tam acerbum credituri sunt. Quare hoc quo minus est credibile nisi ostenditur, eo magis est, si convincitur, vindicandum. XXV. Itaque quum multis ex rebus intelligi potest majores nostros non modo

24. *Videtisne*] 'Don't you see?' See Pro P. Quintio, c. 20.—'poetae tradiderunt:' he alludes to the story of Orestes, as we have it in Aeschylus and in Euripides, who, at the bidding of the god of Delphi, killed his mother to avenge his father, and suffered for his obedience. He could not be 'pius,' dutiful to his father, without incurring guilt by killing his mother. The 'Fabulae' of which Cicero afterwards speaks are the plays, such as the Eumenides of Aeschylus. Klotz supposes, as the old commentators did, that Cicero has imitated in this passage ('Nolite enim putare,' &c.) a passage in the speech of Aeschines against Timarchus (§ 190, Bekk.), which begins: Μὴ γὰρ οἴεσθε, ὦ Ἀθηναῖοι, τὰς τῶν ἀδικημάτων ἀρχὰς, &c.—'elui non potest:' 'lui non potest,' Klotz.

filiis repetant.] Schütz suspected that it should be 'repetunt;' and perhaps it should be. The subjunctive is intelligible, but it does not express, like 'repetunt,' the fact that the Furies do night and day exact vengeance. If it is the subjunctive, the meaning is 'Furiae quae . . . repetant,' 'Furies whose office it is to exact.'

si convincitur,] 'if it is proved.' See Vol. I. Verr. Act. i. c. 4, and Pro Cluentio, c. 23: "si doceo non ab Avito, vinco ab Oppianico."

armis plus quam ceteras nationes, verum etiam consilio sapientiaque potuisse; tum ex hac re vel maxime, quod in impios singulare supplicium invenerunt. Qua in re quantum prudentia praestiterint iis qui apud ceteros sapientissimi fuisse dicuntur considerate. Prudentissima civitas Atheniensium dum ea rerum potita est fuisse traditur. Ejus porro civitatis sapientissimum Solonem dicunt fuisse, eum qui leges quibus hodie quoque utuntur scripserit. Is quum interrogaretur cur nullum supplicium constituisset in eum qui parentem necasset, respondit se id neminem facturum putasse. Sapienter fecisse dicitur quum de eo nihil sanxerit quod antea commissum non erat, ne non tam prohibere quam admonere videretur. Quanto majores nostri sapientius, qui quum intelligerent nihil esse tam sanctum quod non aliquando violaret audacia, supplicium in parricidas singulare excogitaverunt; ut quos natura ipsa retinere in officio non potuisset, ii magnitudine poenae maleficio summoverentur. Insui voluerunt in culeum vivos atque in flumen dejici. XXVI. O singularem sapientiam, judices! Nonne videntur hunc hominem ex rerum natura sustulisse et eripuisse, cui repente caelum, solem, aquam terramque ademerint; ut qui eum necasset unde ipse natus esset, careret iis rebus omnibus ex quibus omnia nata esse dicuntur? Noluerunt feris corpus objicere, ne bestiis quoque, quae tantum scelus attigissent, immanioribus uteremur; non sic nudos in flumen dejicere, ne quum delati essent in mare ipsum polluerent, quo cetera quae violata sunt expiari putantur. Denique nihil tam vile neque tam vulgare est cujus partem ullam reliquerint. Etenim quid tam est commune quam spiritus vivis, terra mortuis, mare fluctuantibus, littus ejectis? Ita vivunt dum

25. *Solonem*] Diogenes Laertius has the same story of the question put to Solon, and of his answer (Solon).

eum qui leges—scripserit.] It would be 'scripsit,' if Cicero had not adopted the form 'dicunt fuisse,' &c.

in culeum vivos] The old commentators wondered that Cicero has not mentioned the other parts of this punishment which are contained in the excerpt from Modestinus (c. 11), the flogging, and the animals that were put in the sack with the criminal; and various conclusions have been drawn from this omission. One conclusion is, that the other parts of the punishment did not exist in Cicero's time. But Cicero has laboured the thing enough; and he knew that. If he had worked out the dog, the cock, the viper, and the ape, just as he has done the rest, he would have raised a laugh. He would have become ridiculous.

26. *non sic nudos*] 'Not naked just as they are.'

Etenim—commune] Cicero says of this passage in his Orator (c. 30): "Quantis illa clamoribus adolescentuli diximus de supplicio parricidarum? quae nequaquam satis deferbuisse post aliquanto sentire coepimus: 'Quid enim tam commune,'" &c. He adds very justly of this passage: "Sunt enim omnia sicut adolescentis non tam re et maturitate quam spe et expectatione laudata."

commune] This word has a technical meaning. "Et quidem naturali jure communia sunt omnium haec: aer, aqua profluens, et mare, et per hoc litora maris" (Justin. Instit. ii. 1. 1, and Schrader's notes).—'sine caussa admittere:' see c. 30, 'Sic vita est,' &c.

possunt, ut ducere animam de caelo non queant; ita moriuntur ut eorum ossa terra non tangat; ita jactantur fluctibus ut numquam alluantur; ita postremo ejiciuntur ut ne ad saxa quidem mortui conquiescant. Tanti maleficii crimen, cui maleficio tam insigne supplicium est constitutum, probare te, Eruci, censes posse talibus viris, si ne caussam quidem maleficii protuleris? Si hunc apud bonorum emptores ipsos accusares eique judicio Chrysogonus praeesset, tamen diligentius paratiusque venisses. Utrum quid agatur non vides, an apud quos agatur? Agitur de parricidio; quod sine multis caussis suscipi non potest. Apud homines autem prudentissimos agitur, qui intelligunt neminem ne minimum quidem maleficium sine caussa admittere.

XXVII. Esto: caussam proferre non potes. Tametsi statim vicisse debeo, tamen de meo jure decedam, et tibi quod in alia caussa non concederem in hac concedam, fretus hujus innocentia. Non quaero abs te quare patrem Sex. Roscius occiderit: quaero quomodo occiderit. Ita quaero abs te, C. Eruci, quomodo; et sic tecum agam ut in eo loco vel respondendi vel interpellandi tibi potestatem faciam, vel etiam si quid voles interrogandi. Quomodo occidit? Ipse percussit an aliis occidendum dedit? Si ipsum arguis, Romae non fuit: si per alios fecisse dicis, quaero servosne an liberos? Quos homines? indidemne Ameria an hosce ex urbe sicarios? Si Ameria: qui sunt hi? cur non nominantur? Si Roma: unde eos noverat Roscius, qui Romam multis annis non venit neque umquam plus triduo fuit? Ubi eos convenit? quicum locutus est? quomodo persuasit? Pretium dedit.—Cui dedit? per quem dedit? unde aut quantum dedit? nonne his vestigiis ad caput maleficii perveniri solet? Et simul tibi in mentem veniat facito, quemadmodum vitam hujusce depinxeris: hunc hominem ferum atque agrestem fuisse; numquam cum homine quoquam collocutum esse; numquam in oppido constitisse. Qua in re praetereo illud, quod mihi maximo argumento ad hujus innocentiam poterat esse, in rusticis moribus, in victu arido, in hac horrida incultaque vita istiusmodi maleficia gigni non solere. Ut non omnem frugem neque arborem in omni agro reperire possis, sic non omne facinus in omni vita nascitur. In urbe luxuries creatur; ex luxuria exsistat avaritia necesse est; ex avaritia erumpat audacia: inde omnia scelera ac

27. *in eo loco*] 'In meo loco:' Klotz: which spoils the meaning.

indidem] 'From the very same place, from Ameria?' The word occurs in Cato, De R. R. § 25, and elsewhere in Cicero.

qui non venit—fuit?] These should be subjunctives, like 'is homo qui . . . fuerit,' in c. 28.

maleficia gignuntur. Vita autem haec rustica, quam tu agrestem vocas, parsimoniae, diligentiae, justitiae magistra est. XXVIII. Verum haec missa facio. Illud quaero: is homo qui, ut tute dicis, numquam inter homines fuerit, per quos homines hoc tantum facinus tam occultum absens praesertim conficere potuerit. Multa sunt falsa, judices, quae tamen argui suspiciose possunt: in his rebus si suspicio reperta erit, culpam inesse concedam. Romae Sex. Roscius occiditur, quum in agro Amerino esset filius. Litteras, credo, misit alicui sicario, qui Romae noverat neminem. Arcessivit aliquem.—At quando? Nuntium misit.—Quem, aut ad quem? Pretio, gratia, spe, promissis induxit aliquem.—Nihil horum ne confingi quidem potest: et tamen caussa de parricidio dicitur. Reliquum est ut per servos id admiserit. O Dii immortales! rem miseram et calamitosam. Quod in tali crimine innocenti saluti solet esse, ut servos in quaestionem polliceatur, id Sex. Roscio facere non licet. Vos, qui hunc accusatis, omnes ejus servos habetis. Unus puer, victus quotidiani administer, ex tanta familia Sex. Roscio relictus non est. Te nunc appello, P. Scipio, te, Metelle: vobis advocatis, vobis agentibus, aliquoties duos servos paternos in quaestionem ab adversariis Sex. Roscius postulavit. Meministine te, T. Rosci, recusare? Quid, ii servi ubi sunt? Chrysogonum, judices, sectantur: apud eum sunt in honore et in pretio. Etiam nunc ut ex his quaeratur ego postulo; hic orat atque obsecrat. Quid facitis? cur recusatis? Dubitate etiam nunc, judices, si potestis, a quo sit Sex. Roscius occisus; ab eone qui propter illius mortem in egestate et insidiis versatur, cui ne quaerendi quidem de morte patris potestas permittitur; an ab iis qui quaestionem fugitant, bona possident, in caede atque ex caede vivunt. Omnia, judices, in hac caussa sunt misera atque indigna; tamen hoc nihil

gignuntur.] There is a reading 'gignantur,' as one might suppose. Either form will do: 'gignantur' is a continuation of the form 'existat . . . necesse est.' 'Gignuntur' is a distinct proposition.

28. *Arcessivit aliquem.—At*] 'Arcessivit aliquem, quem aut quando?' Klotz.—'calamitosam. Quod:' Klotz has the passage thus: 'rem miseram et calamitosam, quod in tali crimine quod innocenti,' &c.; and there is good authority for 'quod' being repeated. But I do not think that this is the genuine text.

in quaestionem] 'To offer his slaves for torture;' for a man's slaves could not at this time be put to the torture to furnish evidence against their master, unless he consented. Cicero has two passages on torture in the Oratoriae Partitiones (c. 14. 34), in one of which he says: "de nostrorum etiam prudentissimorum institutis, qui cum de servis in dominos quaeri noluissent, de incestu tamen et conjuratione, quae facta me consule est, quaerendum putaverunt." See Pro Cluentio, c. 63.

vobis advocatis, vobis agentibus,] This refers to what took place before the trial. These men were called in as witnesses, when Sex. Roscius proposed to put the slaves to the torture (c. 41). Compare Pro Cluentio, c. 63: "advocantur amici et hospites Oppianici . . . Tormentis omnibus vehementissime quaeritur."

neque acerbius, neque iniquius proferri potest. Mortis paternae de servis paternis quaestionem habere filio non licet. Ne tamdiu quidem dominus erit in suos, dum ex iis de patris morte quaeratur. Veniam neque ita multo post ad hunc locum. Nam hoc totum ad Roscios pertinet, de quorum audacia tum me dicturum pollicitus sum quum Erucii crimina diluissem.

XXIX. Nunc, Eruci, ad te venio. Conveniat mihi tecum necesse est, si ad hunc maleficium istud pertinet, aut ipsum sua manu fecisse, id quod negas, aut per aliquos liberos aut servos. Liberosne? quos neque ut convenire potuerit neque qua ratione inducere neque ubi neque per quos neque qua spe, aut quo pretio, potes ostendere. Ego contra ostendo, non modo nihil eorum fecisse Sex. Roscium, sed ne potuisse quidem facere; quod neque Romae multis annis fuerit neque de praediis umquam temere discesserit. Restare tibi videbatur servorum nomen, quo quasi in portum rejectus a ceteris suspicionibus confugere posses; ubi scopulum offendis ejusmodi ut non modo ab hoc crimen resilire videas, verum omnem suspicionem in vosmetipsos recidere intelligas. Quid est ergo, quo tandem accusator inopia argumentorum confugerit? Ejusmodi tempus erat, inquit, ut homines vulgo impune occiderentur; quare tu hoc propter multitudinem sicariorum nullo negotio facere potuisti. Interim mihi videris, Eruci, una mercede duas res assequi velle; nos judicio perfundere; accusare autem eos ipsos a quibus mercedem accepisti. Quid ais? vulgo occidebantur. Per quos, et a quibus? Nonne cogitas te a sectoribus huc adductum esse? Quid postea? Nescimus per ista tempora eosdem fere sectores fuisse collorum et bonorum? Ii denique qui tum armati dies noctesque concursabant, qui Romae erant assidui,

29. *judicio perfundere;*] This is hard to express in English; but it is not obscure. Erucius had pay or hire (merces) for doing his work. Not content with doing one thing, which he was paid for doing, he must do two things: he must 'drench or drown Cicero's client in, by, or with this trial;' but, as if he were not satisfied with that, by his foolish admissions he also brings suspicion on the party which hires him. Hotmann does not take 'merces' literally in the sense of 'hire.' But it is not worth while to show the silliness of his note. P. Manutius saw the meaning. 'Judicio perfundere' is a strong expression, and Cicero may have invented it. The meaning of 'perfundere' appears from Horace (Sat. ii. 7. v. 91), 'perfundit gelida;' (Sat. i. 7. v. 32) 'Italo perfusus aceto,' and other passages.

sectores] 'Sector,' 'a cutter,' is a cut-throat; and also the purchaser of the property of a condemned person; 'qui,' says Asconius, 'spem lucri sui sequutus bona condemnatorum semel auctionatur.' Accordingly he supposes that the 'sector bonorum' has his name 'a sequendo.' But the cut-throat must have had his name 'a secando.' It is the same word 'sector' in both cases. See Vol. I. Ver. ii. 1. c. 20; and Caesar, B. G. ii. 33, and the note in Long's ed.

concursabant,] Klotz has 'circum cursabant,' on some authority, but it is a bad reading, that is, it is false. Comp. Vol. I. Verr. ii. 5. c. 31, and Caesar, B. G. v. 50.

qui omni tempore in praeda et in sanguine versabantur, Sex. Roscio temporis illius acerbitatem iniquitatemque objicient, et illam sicariorum multitudinem, in qua ipsi duces ac principes erant, huic crimini putabunt fore? qui non modo Romae non fuit, sed omnino quid Romae ageretur nesciret, propterea quod ruri assiduus, quemadmodum tute confiteris, fuit. Vereor ne aut molestus sim vobis, judices, aut ne ingeniis vestris videar diffidere, si de tam perspicuis rebus diutius disseram. Erucii criminatio tota, ut arbitror, dissoluta est; nisi forte exspectatis ut illa diluam, quae de peculatu ac de ejusmodi rebus commentitiis inaudita nobis ante hoc tempus ac nova objecit: quae mihi iste visus est ex alia oratione declamare quam in alium reum commentaretur: ita neque ad crimen parricidii neque ad eum qui caussam dicit pertinebant. De quibus quoniam verbo arguit, verbo satis est negare. Si quid est quod ad testes reservet, ibi nos quoque, ut in ipsa caussa, paratiores reperiet quam putabat. XXX. Venio nunc eo quo me non cupiditas ducit, sed fides. Nam si mihi liberet accusare, accusarem alios potius ex quibus possem crescere: quod certum est non facere, dum utrumvis licebit. Is enim mihi videtur amplissimus qui sua virtute in altiorem locum pervenit, non qui ascendit per alterius incommodum et calamitatem. Desinamus aliquando ea scrutari quae sunt inania: quaeramus maleficium ubi et est et inveniri potest. Jam intelliges, Eruci, certum crimen quam multis suspi-

qui non fuit, sed omnino—nesciret,] Both these tenses are right, or they may be. There are many instances in which an indicative and a subjunctive are connected in this manner, and even by 'et.' He affirms of Roscius 'that he not only was not at Rome at this time, but was a person entirely ignorant of what was going on there, because he was always in the country.' Where the second affirmation is contained in the second 'fuit,' and the conclusion is in the 'nesciret.'

peculatus] Charges of 'peculatus,' and of other things invented for the occasion, were foreign to the trial, and Cicero needed to say nothing about them. It appears that they had not come to the evidence yet (si quid est quod ad testes reservet). Erucius had stated his case, and Cicero replies; but the reply would be more efficient if it were an answer to what had been proved, instead of a reply to what had only been said.

30. *cupiditas*] 'Cupiditas' is an excessive desire after a thing. He explains himself at the end of c. 32: "ut omnes intelligant me non studio accusare, sed officio defendere." 'Studium' is explained in Vol. I. Verr. ii. 4. c. 67.—'ex quibus possem crescere:' 'if I chose to be an accusator, I should have chosen others to accuse,—men from whose prosecution I should have got some credit.' See Vol. I. Verr. ii. 5. c. 67.

quaeramus maleficium ubi, &c.] Orelli has 'quaeramus ubi maleficium et est,' &c., on which Klotz says that he has removed the solecism by printing 'quaeramus ibi maleficium, ubi et est,' &c. But he might have removed this solecism, as he calls it, simply by altering the place of 'maleficium,' without introducing his 'ibi,' which spoils the sentence. Besides, I don't admit that there is any solecism in the passage, as it stands in Orelli's text. This perverse notion that a Roman could not say 'quaeramus ubi maleficium est,' ought to be got rid of, if it exists. Nobody supposes that 'quaeramus *ubi* maleficium *est*,' is the same as 'quaeramus ubi maleficium sit.' The emphasis on the *ubi* and the *est* in the first expression shows the meaning.

cionibus coarguatur. Tametsi neque omnia dicam et leviter unum quodque tangam. Neque enim id facerem, nisi necesse esset, et id erit signi me invitum facere, quod non prosequar longius quam salus hujus et mea fides postulabit. Caussam tu nullam reperiebas in Sex. Roscio. At ego in T. Roscio reperio. Tecum enim mihi res est, T. Rosci, quoniam istic sedes ac te palam adversarium esse profiteris; de Capitone post viderimus, si, quemadmodum paratum esse audio, testis prodierit: tum alias quoque suas palmas cognoscet, de quibus me ne audisse quidem suspicatur. L. Cassius ille, quem populus Romanus verissimum et sapientissimum judicem putabat, identidem in caussis quaerere solebat, Cui bono fuisset. Sic vita hominum est ut ad maleficium nemo conetur sine spe atque emolumento accedere. Hunc quaesitorem ac judicem fugiebant atque horrebant ii quibus periculum creabatur; ideo quod, tametsi veritatis erat amicus, tamen natura non tam propensus ad misericordiam quam implicatus ad severitatem videbatur. Ego, quamquam praeest huic quaestioni vir et contra audaciam fortissimus et ab innocentia clementissimus, tamen facile me paterer vel illo ipso acerrimo judice quaerente vel apud Cassianos judices, quorum etiam nunc ii quibus caussa dicenda est nomen ipsum reformidant, pro Sex. Roscio dicere. XXXI. In hac enim caussa quum viderent illos amplissimam pecuniam possidere, hunc in summa mendicitate esse, illud quidem non quaererent, Cui bono fuisset, sed eo perspi-

id erit signi] Weiske 'suspected' that it should be 'signe;' and the suspicion proves that he did not understand Cicero. 'Id signi' means 'and there shall be so much proof as this, that I do it unwillingly: I will not follow it up further than,' &c. 'Id signi' is like 'hoc commodi' (c. 32), 'id aetatis,' and many other expressions, which occur in Cicero.

alias—palmas] Not gladiatorial honours; but honours of a different kind; glory that he has gained as an assassin. See c. 35.

L. Cassius] L. Cassius Longinus, consul B.C. 127. His severity was long remembered by the Romans, who called him 'scopulus reorum' (Valer. Max. iii. 7. § 9). But he was a just man, and a man of sense. He knew that a crime had a motive, and generally a motive of interest, and accordingly he used to ask who had got something by the act.—'Cui bono:' see c. 5 note.

Sic vita hominum est] A passage of Lysias (Λόγος Ἀρεοπαγιτικὸς ὑπὲρ τοῦ σηκοῦ (c. 4), is quoted as resembling this. Cicero may have had it before his eyes: *πάντες γὰρ ἄνθρωποι τὰ τοιαῦτα οὐχ ὕβρεως ἀλλὰ κέρδους ἕνεκα ποιοῦσι*, &c. It is what was called a 'locus communis;' but it is true that men do wrong for some advantage, or supposed advantage, and not barely in order to do wrong. The same thought is well expressed by Montaigne (Essais ii. c. 17); and by Montesquieu (Lettres Persanes, 84).

implicatus ad severitatem] Nobody, except Klotz, has succeeded in explaining 'implicatus ad severitatem.' 'Inclinatus,' 'impacatus,' 'implacatus,' have been proposed.—'ab innocentia:' this is not quite clear. Graevius takes it to mean 'propter vitae sanctitatem et integritatem clementissimus.' But this is not the meaning; and there could be no sense in it. 'He was most resolute in opposing crime (audacia), but on the side of innocence most mild:' that is, he was severe on the one side, mild on the other, as the circumstances required. Cicero deals in antithesis, like the Greeks whom he studied.

31. *sed eo perspicuum*] Klotz has 'sed, eo perspicuo, crimen,' &c.; which Lam-

cuum crimen et suspicionem potius ad praedam adjungerent quam ad egestatem. Quid si accedit eodem ut tenuis antea fueris? quid si, ut avarus? quid si, ut audax? quid si, ut illius qui occisus est inimicissimus? Num quaerenda caussa quae te ad tantum facinus adduxerit? Quid ergo horum negari potest? Tenuitas hominis ejusmodi est ut dissimulari non queat atque eo magis eluceat quo magis occultatur. Avaritiam praefers qui societatem coieris de municipis cognatique fortunis cum alienissimo. Quam sis audax, ut alia obliviscar, hinc omnes intelligere potuerunt, quod ex tota societate, hoc est ex tot sicariis, solus tu inventus es qui cum accusatoribus sederes atque os tuum non modo ostenderes, sed etiam offerres. Inimicitias tibi fuisse cum Sex. Roscio et magnas rei familiaris controversias concedas necesse est. Restat, judices, ut hoc dubitemus, uter potius Sex. Roscium occiderit; is ad quem morte ejus divitiae venerint, an is ad quem mendicitas; is qui antea tenuis fuerit, an is qui postea factus sit egentissimus; is qui ardens avaritia feratur infestus in suos, an is qui semper ita vixerit ut quaestum nosset nullum, fructum autem eum solum quem labore peperisset; is qui omnium sectorum audacissimus sit, an is qui propter fori judiciorumque insolentiam non modo subsellia, verum etiam urbem ipsam reformidet: postremo, judices, id quod ad rem mea sententia maxime pertinet, utrum inimicus potius an filius. XXXII. Haec tu, Eruci, tot et tanta si nactus esses in reo, quamdiu diceres? quo te modo jactares? Tempus, hercule, te citius quam oratio deficeret. Etenim in singulis rebus ejusmodi materies est ut dies singulos possis consumere. Neque ego non possum; non enim mihi tantum derogo, tametsi nihil arrogo, ut te copiosius quam me putem posse dicere. Verum ego forsitan propter multitudinem patronorum in grege adnumerer. Te pugna Cannensis accusatorem sat bonum fecit. Multos caesos non ad Thrasimenum lacum, sed ad Servilium vidimus. Quis ibi non est *vulneratus ferro*

binus approves, who says, 'Assentio Cl. Puteano, qui ita legendum censet.' This is a very bad alteration. 'Eo' is supposed by some to be the same as 'ideo.' I take 'eo' to mean 'to that quarter,' and 'ad praedam,' &c. as the explanation of 'eo.' If this will not do, Hotmann's suggestion is the best, to change 'eo' into 'et:' or we may omit it.

Avaritiam praefers qui] 'You show your greediness by having formed a partnership with one the furthest removed from you, against the interests of a townsman and a kinsman.' 'Prae te fers Cd. Ursini:' Orelli. The 'alienissimus' is Chrysogonus.

32. *Servilium*] He compares the proscriptions in Sulla's time to the battle of Cannae, or the earlier battle at the Lacus Thrasymenus. The Servilius is explained by Hadrianus to be one of the Lacus or water reservoirs at Rome, near the Basilica Julia. A passage of Julius Firmicus is quoted which explains the text: "Visne aliquid tibi, quia in Sullanis temporibus versamur, de lacu Servilio referam? in quo

Phrygio? Non necesse est omnes commemorare Curtios, Marios, denique Mamercos, quos jam aetas a praeliis avocabat: postremo Priamum ipsum senem Antistium, quem non modo aetas sed etiam leges pugnare prohibebant. Jam quos nemo propter ignobilitatem nominat, sexcenti sunt, qui inter sicarios et de veneficiis accusabant: qui omnes, quod ad me attinet, vellem viverent. Nihil enim mali est canes ibi quam plurimos esse, ubi permulti observandi multaque servanda sunt. Verum, ut fit, multa saepe imprudentibus imperatoribus vis belli ac turba molitur. Dum is in aliis rebus erat occupatus, qui summam rerum administrabat, erant interea qui suis vulneribus mederentur; qui, tamquam si offusa rei publicae sempiterna nox esset, ita ruebant in tenebris omniaque miscebant; a quibus miror, ne quod judiciorum esset vestigium, non subsellia quoque esse combusta. Nam et accusatores et judices sustulerunt. Hoc commodi est, quod ita vixerunt ut testes omnes, si cuperent, interficere non possent. Nam dum hominum genus erit, qui accuset eos non deerit: dum civitas erit, judicia fient. Verum, ut coepi dicere, et Erucius, haec si haberet in caussa, quae commemoravi, posset ea quamvis diu dicere, et ego, judices, possum. Sed in animo est, quemadmodum ante dixi, leviter transire ac tantummodo perstringere unam quamque rem, ut omnes intelligant me non studio accusare, sed officio defendere. XXXIII. Video igitur caussas esse permultas quae istum impellerent. Videamus nunc

multorum senatorum capita ad ostentationem immanissimi facinoris sectis cervicibus pependerunt." So says Seneca (De divina providentia, c. 3), "supra Servilianum lacum, id enim proscriptionis Sullae spoliarium est, senatorum capita et passim vagantes per urbem percussorum greges." The Lacus Servilius was at the beginning of the Vicus Jugarius, near the Basilica Julia, where M. Agrippa afterwards placed the figure of a hydra (Festus, p. 290).

Quis ibi, &c.] The 'Phrygio ferro' is the sword of the assassin slave. It is probable that the last words are a part of an Iambic verse, which would be 'vulneratus 'st ferro Phrygio,' for the antepenultima of 'Phrygio' being made long is no objection here.

Curtios,] These appear to be men who perished in the proscriptions. They were too old to fight, but not to be 'accusatores,' and they were cut off, because they were dangerous to the opposite party. P. Antistius is called Priam by reason of his age. He was put to death B. C. 82, by order of the younger Marius (Appian, B. C. i. 88) in the Senate. Though past the age for military service, he was an active man in the Forum. Cicero (Brutus, c. 63) has drawn his character. Antistius was of the party of Sulla. Among the other names that he mentions is Marius; but I don't know whom he means, if not C. Marius. The commentators suppose that in this sentence 'Non necesse,' &c. Cicero is speaking of those who perished at the Servilian reservoir in the proscriptions of Sulla; but Antistius was of Sulla's party. Cicero is speaking of 'accusatores' who were dead; and he would not be sorry if they were alive. As to the form 'Curtios,' &c. see Horace, Sat. i. 7. v. 8, Macleane's ed.

is—qui] L. Sulla, whom he handles very dexterously.—'qui suis vulneribus:' 'there were men busy in curing their own wounds,' which they did by removing out of the way all who might have called them to account for their villainy. Graevius thinks that it means that they cured their poverty by seizing other men's property. But the context shows that the other is the meaning.

ecqua facultas suscipiendi maleficii fuerit. Ubi occisus est Sex. Roscius? Romae. Quid, tu, Rosci, ubi tunc eras? Romae. Verum quid ad rem? et alii multi. Quasi nunc id agatur, quis ex tanta multitudine occiderit, ac non hoc quaeratur, eum qui Romae sit occisus utrum veri similius sit ab eo esse occisum, qui assiduus eo tempore Romae fuerit, an ab eo qui multis annis Romam omnino non accesserit. Age nunc ceteras facultates quoque consideremus. Erat tum multitudo sicariorum, id quod commemoravit Erucius, et homines impune occidebantur. Quid, ea multitudo quae erat? Opinor, aut eorum qui in bonis erant occupati, aut eorum qui ab iis conducebantur ut aliquem occiderent. Si eos putas qui alienum appetebant, tu es in eo numero, qui nostra pecunia dives es; sin eos quos qui leviore nomine appellant percussores vocant, quaere in cujus fide sint et clientela; mihi crede, aliquem de societate tua reperies; et quidquid tu contra dixeris, id cum defensione nostra contendito: ita facillime caussa Sex. Roscii cum tua conferetur. Dices: Quid postea, si Romae assiduus fui? Respondebo: At ego omnino non fui. Fateor me sectorem esse; verum et alii multi. At ego, ut tute arguis, agricola et rusticus. Non continuo, si me in gregem sicariorum contuli, sum sicarius. At ego profecto, qui ne novi quidem quemquam sicarium, longe absum ab ejusmodi crimine. Permulta sunt quae dici possunt quare intelligatur summam tibi facultatem fuisse maleficii suscipiendi; quae non modo idcirco praetereo, quod te ipsum non libenter accuso, verum eo magis etiam, quod, si de illis caedibus velim commemorare, quae tum factae sunt ista eadem ratione qua Sex. Roscius occisus est, vereor ne ad plures oratio mea pertinere videatur.

XXXIV. Videamus nunc strictim, sicut cetera, quae post mortem Sex. Roscii abs te, T. Rosci, facta sunt: quae ita aperta et manifesta sunt ut mediusfidius, judices, invitus ea dicam. Vereor enim, cuicuimodi es, T. Rosci, ne ita hunc videar voluisse servare ut tibi omnino non pepercerim. Quum hoc vereor et cupio

33. *in bonis—occupati,*] 'Busy in getting other men's property.'—'fide et clientela:' this is one of Caesar's expressions. 'In fide esse' means to owe allegiance, to be obedient (B. G. vi. 4. vii. 5).—'cum defensione nostra contendito:' 'compare or contrast with our defence.'—'pertinere videatur:' 'may be considered to apply to a great many.' In c. 36, 'ad quem maleficium pertineret.'

34. *strictim,*] Cicero joins this word with 'breviter' in another place (Pro Cluentio, c. 10). 'Strictim' means 'closely,' so as to put much in a small compass.

mediusfidius,] Among the singular forms of expression in the Latin language are the forms of oath or solemn asseveration, which are nearly all elliptical. Cicero preferred 'mehercule' to 'mehercules,' which is a part of the genuine form 'ita me hercules juvet' (Vol. I. Verr. ii. 4. c. 14). 'Mediusfidius' is 'ita me deus fidius juvet.'

cuicuimodi] Vol. I. Verr. ii. 5. c. 41. Orelli says, 'sic e Prisciano p. 959.'—'venit . . oris:' Pro Quintio, c. 2.

tibi aliqua ex parte, quod salva fide possim, parcere, rursus immuto voluntatem meam. Venit enim mihi in mentem oris tui. Tene, quum ceteri socii tui fugerent ac se occultarent, ut hoc judicium non de illorum praeda, sed de hujus maleficio fieri videretur, potissimum tibi partes istas depoposcisse ut in judicio versarere et sederes cum accusatore? Qua in re nihil aliud assequeris nisi ut ab omnibus mortalibus audacia tua cognoscatur et impudentia. Occiso Sex. Roscio, qui primus Ameriam nuntiat? Mallius Glaucia, quem jam antea nominavi, tuus cliens et familiaris. Quid attinuit eum potissimum nuntiare quod, si nullum jam ante consilium de morte ac de bonis ejus inieras nullamque societatem neque sceleris neque praemii cum homine ullo coieras, ad te minime omnium pertinebat? Sua sponte Mallius nuntiat. Quid, quaeso, ejus intererat? An, quum Ameriam non hujusce rei caussa venisset, casu accidit ut id quod Romae audierat primus nuntiaret? Cujus rei caussa venerat Ameriam? Non possum, inquit, divinare. Eo rem jam adducam ut nihil divinatione opus sit. Qua ratione Roscio Capitoni primum nuntiavit? Quum Ameriae Sex. Roscii domus, uxor liberique essent, quum tot propinqui cognatique optime convenientes, qua ratione factum est ut iste tuus cliens, sceleris tui nuntius, T. Roscio Capitoni potissimum nuntiaret? Occisus est a caena rediens: nondum lucebat quum Ameriae scitum est. Quid hic incredibilis cursus, quid haec tanta celeritas festinatioque significat? Non quaero quis percusserit. Nihil est, Glaucia, quod metuas. Non excutio te si quid forte ferri habuisti, non scrutor: nihil ad me arbitror pertinere. Quoniam cujus consilio occisus sit invenio, cujus manu sit percussus non laboro. Unum hoc sumo, quod mihi apertum tuum scelus resque manifesta dat. Ubi aut unde audivit Glaucia? Qui tam cito scivit? Fac audisse statim. Quae res eum nocte una tantum itineris contendere coegit, quae necessitas eum tanta premebat ut, si sua sponte iter Ameriam faceret, id temporis Roma profisceretur, nullam partem noctis requiesceret? XXXV. Etiamne in tam perspicuis rebus argumentatio quaerenda aut conjectura capienda sit? Nonne vobis haec quae audistis cernere oculis videmini, judices? non illum miserum, ignarum casus sui, redeuntem a caena videtis? non positas insidias, non impetum repentinum? Non versatur ante oculos vobis in caede Glaucia? non adest iste T. Roscius? non suis manibus in curru collocat Automedontem illum, sui sceleris acerbissimi ne-

optime convenientes,] This is well translated by Forcellini: 'fra quali passa ottima corrispondenza,' 'who are or were on the best terms with him and with one another.'

35. *Automedontem illum,*] Such allusions to Homer and well-known Greek

fariaeque victoriae nuntium? non orat ut eam noctem pervigilet, ut honoris sui caussa laboret, ut Capitoni quam primum nuntiet? Quid erat quod Capitonem primum scire voluerit? Nescio, nisi hoc video, Capitonem in his bonis esse socium. De tribus et decem fundis tres nobilissimos fundos eum video possidere. Audio praeterea non hanc suspicionem nunc primum in Capitonem conferri. Multas esse infames palmas: hanc primam esse tamen lemniscatam, quae Romae deferatur: nullum modum esse hominis occidendi quo ille non aliquot occiderit: multos ferro, multos veneno. Habeo etiam dicere quem contra morem majorum, minorem annis LX, de ponte in Tiberim dejecerit. Quae si prodierit, atque adeo quum prodierit, scio enim proditurum esse, audiet. Veniat modo: explicet suum volumen illud, quod ei planum facere possum Erucium conscripsisse: quod aiunt illum Sex. Roscio intentasse et minitatum esse, se omnia illa pro testimonio esse dicturum. O praeclarum testem, judices! o gravitatem dignam exspectatione! o vitam honestam atque ejusmodi ut libentibus animis ad ejus testimonium vestrum jusjurandum accommodetis! Profecto non tam perspicue istorum maleficia videremus, nisi ipsos caecos redderet cupiditas et avaritia et audacia. XXXVI. Alter ex ipsa caede volucrem nuntium Ameriam ad socium atque ad magistrum suum misit, ut, si dissimulare omnes cuperent se scire ad quem maleficium pertineret, tamen

writers are common in Cicero; and the Judices who were educated men would understand this allusion to the charioteer of Achilles. Juvenal (i. 61) has

"Automedon nam lora tenebat."

lemniscatam,] A 'palma' with a band or ribband (ληµνίσκος) tied about it. It was a higher reward than the simple 'palma.' This passage is not easy. The proposed reading 'Roma' must be rejected. Among the many meanings of 'deferre,' is that which it has in this passage and in De Orat. (ii. 57), 'to confer:' 'hujus rei palmam—Crasso detulisse.' There remains nothing to explain except the subjunctive 'deferatur,' which depends on 'lemniscatam,' which is the subject, and 'hanc primam' is the predicate. The whole meaning is this: 'I hear that there are many palms (of his)—that this however is the chief, a lemniscata, to be conferred on him at Rome.' I have added 'of his,' which is the meaning; and Klotz reads 'multas esse infames ejus palmas,' which is a conjecture of Lambinus, a conjecture, which, as Orelli observes, is justified in some measure by a reading 'infamius.'

Habeo—dicere] Cicero uses this expression, perhaps an imitation of the Greek form, several times. The best commentary on what follows is the passage of Varro quoted by Nonius Marcellus: "Quum in quintum gradum pervenerunt, atque habebant sexaginta annos, tum denique erant a publicis negotiis liberi atque otiosi. Ideo in proverbium quidam putant venisse ut diceretur, Sexagenarios de ponte dejici oportere, id est, quod suffragium non ferant, quod per pontem ferebatur." The 'pons' is the enclosed way which led to the polling places (septa). This passage explains Cicero's joke, or whatever is the name for it: Roscius is said to have killed a man by throwing him into the Tiber; and what is the main matter in the joke, before he was sixty years old. The passage in the Fasti (v. 620) is worth reading:

"Tum quoque priscorum virgo simulacra virorum
Mittere roboreo scirpea ponte solet," &c.

ipse apertum suum scelus ante omnium oculos poneret. Alter, si Diis immortalibus placet, testimonium etiam in Sex. Roscium dicturus est. Quasi vero id nunc agatur, utrum is quod dixerit credendum, an quod fecerit vindicandum sit. Itaque more majorum comparatum est ut in minimis rebus homines amplissimi testimonium de sua re non dicerent. Africanus, qui suo cognomine declarat tertiam partem orbis terrarum se subegisse, tamen, si sua res ageretur, testimonium non diceret. Nam illud in talem virum non audeo dicere: si diceret, non crederetur. Videte nunc quam versa et mutata in pejorem partem sint omnia. Quum de bonis et de caede agatur, testimonium dicturus est is qui et sector est et sicarius, hoc est qui et illorum ipsorum bonorum de quibus agitur emptor atque possessor est, et eum hominem occidendum curavit de cujus morte quaeritur. Quid tu, vir optime, ecquid habes quod dicas? Mihi ausculta: vide ne tibi desis. Tua quoque res permagna agitur. Multa scelerate, multa audaciter, multa improbe fecisti: unum stultissime, profecto tua sponte, non de Erucii sententia: nihil opus fuit te istic sedere. Neque enim accusatore muto neque teste quisquam utitur eo qui de accusatoris subsellio surgit. Huc accedit, quod paullo tamen occultior atque tectior vestra ista cupiditas esset. Nunc quid est quod quisquam ex vobis audire desideret,

36. *si Diis placet,*] This cannot be translated into English, for the vulgar expression which comes nearest to it, does not mean the same. Donatus takes it to be a form of expressing indignation, or an exclamation by reason of some indignity. Manutius, who gives many examples of the form, says that it expresses indignation, and he might have added sneer or sarcasm, and also thankfulness, for which meaning he cites two examples from Plautus.

utrum is quod dixerit credendum,] 'Id,' some MSS. 'Is' is of course the nominative to 'dixerit.'—'more majorum:' yet it appears from what follows that this man was going to give his testimony in his own case. It might be that this was the old rule and that it was altered now, which will make Cicero consistent; or that he was going to give his evidence, as not being a person interested, though Cicero says that he was. The passage of the Dig. 22. 5. 10: 'nullus idoneus testis in re sua intelligitur' is too vague, and it is not sufficient. In another passage in this title 'De Testibus' (22. 5. 3), the cases are enumerated by Callistratus in which a man might be rejected as a witness, and they were many. After saying 'testium fides diligenter examinanda est,' &c., he adds: 'Nam si careat suspicione testimonium vel propter personam a qua fertur quod honesta, vel propter caussam, quod neque lucri neque gratiae neque inimicitiae caussa fiat, admittendum est.' These remarks imply the exception of certain witnesses. The origin of the rules as to these matters and the time when they were made are not known.

ageretur—diceret,] 'If his own interest had been in question, would not have given his evidence.' And again: 'if he had given it, would not have been believed.'

te istic sedere.] There is no MSS. authority, it is said, for this reading. The MSS. have 'te isti credere.' The emendation is claimed by several critics. It only requires one letter to be altered, 'r' into 's.' Lambinus has referred to four passages in this oration, which confirm the emendation, one of which is in c. 7, 'quorum alterum sedere,' &c.

muto] '*Invito* Faern. suspic.' Orelli; and it is so says Ursini 'in veteribus aliquot libris.' But if it were in all, we could not have it, because it would exactly contradict Cicero's meaning. Two such words as 'muto' and 'invito' are easily confounded in writing.

quum quae facitis ejusmodi sint ut ea dedita opera a vobis contra vosmetipsos facere videamini? Age nunc, illa videamus, judices, quae statim consecuta sunt. Ad Volaterras in castra L. Sullae mors Sex. Roscii quatriduo quo is occisus est Chrysogono nuntiatur. XXXVII. Quaeritur etiam nunc quis eum nuntium miserit? Nonne perspicuum est eumdem qui Ameriam? Curat Chrysogonus ut ejus bona veneant statim; qui non norat hominem aut rem. At qui ei venit in mentem praedia concupiscere hominis ignoti, quem omnino numquam viderat? Soletis, quum aliquid hujuscemodi auditis, judices, continuo dicere: necesse est aliquem dixisse municipem aut vicinum; ii plerumque indicant; per eos plerique produntur. Hic nihil est quod suspicionem hanc putetis. Non enim ego ita disputabo: veri simile est Roscios istam rem ad Chrysogonum detulisse; erat enim eis cum Chrysogono jam antea amicitia; nam quum multos veteres a majoribus Roscii patronos hospitesque haberent, omnes eos colere atque observare destiterunt ac se in Chrysogoni fidem et clientelam contulerunt. Haec possum omnia vere dicere: sed in hac caussa conjectura nihil opus est. Ipsos certo scio non negare ad haec bona Chrysogonum accessisse impulsu suo. Si eum qui indicii partem acceperit oculis cernetis, poteritisne dubitare, judices, qui indicarit? Qui sunt igitur in istis bonis, quibus partem Chrysogonus dederit? duo Roscii. Num quisquam praeterea? Nemo est, judices. Num ergo dubium est quin ii obtulerint hanc praedam Chrysogono, qui ab eo partem praedae tulerunt? Age nunc ex ipsius Chrysogoni judicio Rosciorum factum consideremus. Si nihil in ista pugna Roscii quod operae pretium esset fecerant, quam ob caussam a Chrysogono tantis praemiis donabantur? Si nihil aliud fecerunt nisi rem detulerunt, nonne satis fuit his gratias agi? denique ut perliberaliter ageretur, honoris aliquid haberi? Cur tria praedia tantae pecuniae statim Capitoni dantur? Cur quae reliqua sunt iste Ros-

dedita opera a vobis] Orelli says that most of the MSS. have 'a vobis,' and yet he prints 'a nobis.' 'Nobis' and 'vobis' are often confounded. Nothing but a sound judgment can decide between them here. 'Dedita opera,' which signifies 'from set design,' 'purposely,' is not used with 'a nobis,' or the like ablative, for the sentences in which it occurs are so formed that the persons 'qui dedunt operam' are implied; but still there is no reason why a Roman could not say 'dedita opera a vobis,' especially when he makes the thing stronger by adding 'contra vos.' Yet 'a nobis' may mean what Lambinus says, 'pro nobis,' 'on our side, in our favour.'

37. *suspicionem hanc*] 'Suspicionem hoc:' Klotz. The meaning is the same either way: 'in this case there is no reason for your considering *this* to be a suspicion.' He says afterwards: 'sed in hac caussa conjectura nihil opus est.'

Num quisquam:] Orelli and Klotz have 'num quisnam.' I suppose the MSS. to have both readings.

tantae pecuniae] Comp. Vol. I. Verr. ii. 5. c. 7, 'magnae pecuniae;' where my explanation is cofirmed by this passage, if it needs confirmation.

cius omnia cum Chrysogono communiter possidet? Nonne perspicuum est, judices, has manubias Rosciis Chrysogonum re cognita concessisse? XXXVIII. Venit in decemprimis legatus in castra Capito. Totam vitam, naturam moresque hominis ex ipsa legatione cognoscite. Nisi intellexeritis, judices, nullum esse officium, nullum jus tam sanctum atque integrum quod non ejus scelus atque perfidia violarit et imminuerit, virum optimum esse eum judicatote. Impedimento est quo minus de his rebus Sulla doceatur: ceterorum legatorum consilia et voluntatem Chrysogono enuntiat: monet ut provideat ne palam res agatur: ostendit, si sublata sit venditio bonorum, illum pecuniam grandem amissurum, sese capitis periculum aditurum: illum acuere, hos qui simul erant missi fallere: illum identidem monere ut caveret, hisce insidiose spem falsam ostendere: cum illo contra hos inire consilia, horum consilia illi enuntiare: cum illo partem suam depacisci, hisce aliqua fretus aura semper omnes aditus ad Sullam intercludere. Postremo isto hortatore, auctore, intercessore ad Sullam legati non adierunt: istius fide ac potius perfidia decepti, id quod ex ipsis cognoscere poteritis, si accusator voluerit testimonium eis denuntiare, pro re certa spem falsam domum rettulerunt. In privatis rebus si qui rem mandatam non modo malitiosius gessisset sui quaestus aut commodi caussa, verum etiam negligentius, eum majores summum admisisse dedecus existimabant. Itaque mandati constitutum est judicium non minus turpe quam furti, credo, propterea quod, quibus in rebus ipsi interesse non possumus, in his operae nostrae vicaria fides amicorum supponitur: quam qui laedit, oppugnat omnium commune

38. *aliqua fretus aura*] Hotmann says that all the MSS., known to him, had 'aura,' which word or 'hora' seems to be the MSS. reading. Orelli reads 'aliqua fretus mora,' a conjecture. Klotz, 'aliqua re et mora,' which he calls 'the natural conjecture.' The text seems corrupt: but 'aura' may be right.

testimonium eis denuntiare,] See Vol. I. Verr. ii. 1. c. 19. It is inferred from this present passage that the defendant in a criminal proceeding could not compel a man to appear as a witness in his behalf; in support of which a passage of Asconius is quoted. The question of the power of compelling a man to attend as a witness in the Roman courts is not easy.

mandati judicium] The notion of 'mandatum' is explained Vol. I. Verr. ii. 2. c. 53, and 3. c. 39. See also Pro P. Quintio, c. 15, note. The Roman notion of fair dealing, and honesty (fides) is more strict than ours. If a man undertook to do something for another and for nothing, which is 'mandatum,' he was liable not only if he acted fraudulently, but also if he acted carelessly. We must distinguish 'mandatum,' which implies some act or acts to be done, from 'depositum,' in which case something is intrusted to a man for safe keeping, and if it is lost through his carelessness, there is no action against him, if he took the same care of it that he is used to take of his own things. The 'judicium mandati' is the 'actio mandati' of the Digest (17. tit. 1), where Paulus (1) says: "Mandatum nisi gratuitum nullum est, nam originem ex officio atque amicitia trahit."

vicaria fides] 'confidence in our friends is placed as a substitute for our own acts.' See Vol. I. Verr. ii. 1. c. 36.

praesidium, et quantum in ipso est disturbat vitae societatem. Non enim possumus omnia per nos agere: alius in alia est re magis utilis. Idcirco amicitiae comparantur ut commune commodum mutuis officiis gubernetur. Quid recipis mandatum, si aut neglecturus aut ad tuum commodum conversurus es? cur mihi te offers, ac meis commodis officio simulato officis et obstas? Recede de medio: per alium transigam. Suscipis onus officii, quod te putas sustinere posse; quod minime videtur grave iis qui minime ipsi leves sunt. XXXIX. Ergo idcirco turpis haec culpa est, quod duas res sanctissimas violat, amicitiam et fidem. Nam neque mandat quisquam fere nisi amico; neque credit nisi ei quem fidelem putat. Perditissimi est igitur hominis simul et amicitiam dissolvere et fallere eum qui laesus non esset, nisi credidisset. Itane est? in minimis rebus qui mandatum neglexerit, turpissimo judicio condemnetur necesse est; in re tanta, quum is cui fama mortui, fortunae vivi commendatae sunt atque concreditae, ignominia mortuum, egestate vivum affecerit, is inter honestos homines atque adeo inter vivos numerabitur? In minimis privatisque rebus etiam negligentia in crimen mandati judiciique infamiam revocatur, propterea quod, si ratione fiat, illum negligere oporteat qui mandarit, non illum qui mandatum receperit: in re tanta, quae publice gesta atque commissa sit, qui non negligentia privatum aliquod commodum laeserit, sed perfidia legationis ipsius caerimoniam polluerit maculaque affecerit, qua is tandem poena afficietur, aut quo judicio damnabitur? Si hanc ei rem privatim Sex. Roscius mandavisset, ut cum Chrysogono transigeret atque decideret inque eam rem fidem

39. *mortuum*, &c.] 'mortuum * * * adfecerit:' Klotz, who omits 'egestate vivum.'

inter vivos numerabitur?] The note of Hotmann on this passage is instructive. He would write 'inter viros.' He says of 'inter vivos:' "sensus, non modo inter homines honestos, sed etiam inter vivos; quae sententia inepta est." So it is; but who made it so? Cicero says nothing so silly. 'Shall he be reckoned among honest men, and even among the living?' We should say, 'or even among the living.'

negligentia—revocatur,] There seems to be something wrong. The readings are uncertain and the conjectures not worth much. Cicero only means to say what he has said before, for he was much given to repetition, that the carelessness of the mandatarius makes him liable to an action, and if judgment is against him the consequence is 'infamia.' But I can't explain the words. Klotz writes 'negligentia in crimen mandati judiciumque infamiae revocatur;' for which he has authority; and it may be better.

propterea quod, &c.] 'for this reason, if all is done right, it is the man who has given the mandatum who ought to be negligent, not the man who has received it.' 'Si ratione,' 'if all is done right,' is the same as 'si recte,' which Klotz has, and it means, 'if the mandatarius does what he ought to do.' The man who has entrusted another with his affairs, is the man who ought to be or might be indifferent, and not trouble himself about them, not the man who has promised to look after them for him.

caerimoniam] The sanctity of the embassy, or of the commissioners' duty. He says (Contra Rull. ii. 7), 'quod per caerimonias populi fieri non poterat,' &c.

suam, si quid opus esse putaret, interponeret, ille qui sese facturum recepisset, nonne si ex eo negotio tantulum in rem suam convertisset, damnatus per arbitrum et rem restitueret et honestatem omnem amitteret? Nunc non hanc ei rem Sex. Roscius mandavit, sed, id quod multo gravius est, ipse Sex. Roscius cum fama, vita bonisque omnibus a decurionibus publice Roscio mandatus est; et ex eo T. Roscius non paullum nescio quid in rem suam convertit, sed hunc funditus evertit bonis: ipse tria praedia sibi depactus est: voluntatem decurionum ac municipum omnium tantidem quanti fidem suam fecit.

XL. Videte jam porro cetera, judices, ut intelligatis fingi maleficium nullum posse quo iste sese non contaminarit. In rebus minoribus socium fallere turpissimum est, aequeque turpe atque illud de quo ante dixi. Neque injuria: propterea quod auxilium sibi se putat adjunxisse qui cum altero rem communicavit. Ad cujus igitur fidem confugiet, quum per ejus fidem laeditur cui se commiserit? Atqui ea sunt animadvertenda peccata maxime, quae difficillime praecaventur. Tecti esse ad alienos possumus: intimi multa apertiora videant necesse est: socium vero cavere qui possumus, quem etiam si metuimus, jus officii laedimus? Recte igitur majores eum qui socium fefellisset in virorum bonorum numero non putarunt haberi oportere. At vero T. Roscius non unum rei pecuniariae socium fefellit, quod tametsi grave est, tamen aliquo modo posse ferri videtur, verum novem homines honestissimos ejusdem muneris, legationis, officii mandatorumque socios induxit, decepit, destituit, adversariis tradidit, omni fraude et perfidia fefellit. Qui de ejus scelere suspicari nihil potuerunt, socium officii metuere non debuerunt: ejus malitiam non viderunt, orationi vanae crediderunt. Itaque nunc illi homines honestissimi propter istius insidias parum putantur cauti providique fuisse: iste qui initio proditor fuit, deinde perfuga, qui primo sociorum consilia adversariis enuntiavit, deinde societatem cum ipsis adversariis coiit, terret etiam nos ac minatur, tribus praediis hoc est praemiis sceleris ornatus. In ejusmodi vita, judices, in his tot tantisque flagitiis hoc quoque maleficium de quo

fidem—interponeret,] Compare Caesar, B. G. iv. 9; vi. 6; and vii. 34. 40; and Vol. I. Verr ii. 2. c. 48.

40. *rem communicavit*] 'who has formed a partnership.' See Vol. I. Verr. ii. 3. c. 20.

Tecti—intimi] This is true, and hence I suppose the wise saying that a man may protect himself against his enemies, but he is never safe against his friends, or rather his 'intimi.' Cicero said the same thing again, as he often does, in the Verrine orations.

induxit,] Comp. Contra Rull. ii. c. 36.

maleficium de quo] The matter of the present trial, the assassination of S. Roscius, the father.

judicium est reperietis. Etenim quaerere ita debetis: ubi multa avare, multa audacter, multa improbe, multa perfidiose facta videtis, ibi scelus quoque latere inter illa tot flagitia putatote. Tametsi hoc quidem minime latet, quod ita promptum et propositum est ut non ex illis maleficiis, quae in illo constat esse, hoc intelligatur; verum ex hoc etiam, si quod illorum forte dubitabitur, convincatur. Quid tandem, quaeso, judices, num aut ille lanista omnino jam a gladiatore recessisse videtur, aut iste discipulus magistro tantulum de arte concedere? Par est avaritia, similis improbitas, eadem impudentia, gemina audacia. XLI. Etenim, quoniam fidem magistri cognostis, cognoscite nunc discipuli aequitatem. Dixi jam antea, saepenumero postulatos esse ab istis duos servos in quaestionem. Tu semper, T. Rosci, recusasti. Quaero abs te, iine qui postulabant indigni erant qui impetrarent? an iste non commovebat pro quo postulabant? an res ipsa tibi iniqua videbatur? Postulabant homines nobilissimi atque integerrimi nostrae civitatis, quos jam antea nominavi; qui ita vixerunt talesque a populo Romano putantur ut quidquid dicerent nemo esset qui non aequum putaret. Postulabant autem pro homine miserrimo atque infelicissimo, qui vel ipse sese in cruciatum dari cuperet, dum de patris morte quaereretur. Res porro abs te ejusmodi postulabatur, ut nihil interesset, utrum eam rem recusares an de maleficio confiterere. Quae quum ita sint, quaero abs te quam ob caussam recusaris. Quum occiditur Sex. Roscius, ibidem fuerunt. Servos ipsos, quod ad me attinet, neque arguo neque purgo: quod a vobis oppugnari video, ne in quaestionem dentur, suspiciosum est: quod vero apud vos ipsos in honore tanto sunt, profecto necesse est sciant aliquid, quod si dixerint perniciosum vobis futurum sit. In dominos quaeri de servis iniquum est.—Anne quaeritur? Sex. enim Roscius reus est. Neque enim quum de hoc quaeritur vos dominos esse dicitis.—Cum Chrysogono sunt. Ita credo: litteris eorum et urbanitate Chrysogonus ducitur ut inter suos omnium deliciarum atque omnium artium puerulos ex tot elegantissimis familiis lectos

a gladiatore] This reading, which appears to be the general reading of the MSS., is 'troubled' by the critics without reason. It seems to mean 'to have given up his character of gladiator.' Klotz, who generally likes the rarer forms of expression, where the vigour of the language, as he says, makes up for any little irregularity in the form, has 'gladio.' The origin of the reading 'cessisse' for 'recessisse' is plain.

41. *quod a vobis oppugnari*] This is the reading of some MSS. Orelli has 'quod a vobis hoc pugnari,' but he does not say on what authority. But it is Latin.

Anne quaeritur? &c.] There is some confusion here. I give the text of Klotz, which is perhaps nearer to the mark. "At ne quaeritur [quidem]. Sex. enim Roscius reus est. Neque enim cum de hoc quaeritur [in dominum quaeritur], vos enim dominos," &c.

velit hos versari, homines paene operarios, ex Amerina disciplina patrisfamiliae rusticani. Non est ita profecto, judices: non est veri simile ut Chrysogonus horum litteras adamarit aut humanitatem; non, ut rei familiaris negotio diligentiam cognorit eorum et fidem. Est quiddam, quod occultatur. Quod quo studiosius ab ipsis opprimitur et absconditur, eo magis eminet et apparet. XLII. Quid igitur, Chrysogonus sui maleficii occultandi caussa quaestionem de his haberi non vult? Minime, judices. Non in omnes arbitror omnia convenire. Ego in Chrysogono, quod ad me attinet, nihil ejusmodi suspicor: neque hoc mihi nunc primum in mentem venit dicere. Meministis me ita distribuisse initio caussam, in crimen cujus tota argumentatio permissa Erucio est, et in audaciam cujus partes Rosciis impositae sunt. Quidquid maleficii, sceleris, caedis erit, proprium id Rosciorum esse debebit. Nimiam gratiam potentiamque Chrysogoni dicimus et nobis obstare et perferri nullo modo posse, et a vobis, quoniam potestas data est, non modo infirmari, verum etiam vindicari oportere. Ego sic existimo: qui quaeri velit ex iis quos constat quum caedes facta sit affuisse, eum cupere verum invenire; qui recuset, eum profecto, tametsi verbo non audeat, tamen re ipsa de maleficio suo confiteri. Dixi initio, judices, nolle me plura de istorum scelere dicere quam caussa postularet ac necessitas ipsa cogeret. Nam et multae res afferri possunt et unaquaeque earum multis cum argumentis dici potest. Verum ego quod invitus ac necessario facio, neque diu neque diligenter facere possum. Quae praeteriri nullo modo poterant, ea leviter, judices, attigi: quae posita sunt in suspicionibus, de quibus si coepero dicere, pluribus verbis sit disserendum, ea vestris ingeniis conjecturaeque committo.

XLIII. Venio nunc ad illud nomen aureum Chrysogoni, sub quo nomine tota societas statuitur: de quo, judices, neque quomodo dicam neque quomodo taceam reperire possum. Si enim taceo, vel maximam partem relinquo: sin autem dico, vereor ne non ille solus, id quod ad me nihil attinet, sed alii quoque plures laesos se esse putent. Tametsi ita se res habet ut mihi in communem caussam sectorum dicendum nihil magno opere videatur. Haec enim caussa nova profecto et singularis est. Bonorum Sex. Roscii emptor est Chrysogonus. Primum hoc videamus; ejus hominis bona qua ratione venierunt aut quomodo venire potuerunt? Atque hoc non ita quaeram, judices, ut id dicam esse indignum, hominis innocentis bona venisse. Si enim haec audientur ac libere dicentur, non fuit

tantus homo Sex. Roscius in civitate ut de eo potissimum conqueramur. Verum hoc ego quaero: qui potuerunt ista ipsa lege quae de proscriptione est sive Valeria est sive Cornelia, non enim novi nec scio, verum ista ipsa lege bona Sex. Roscii venire qui potuerunt? Scriptum enim ita dicunt esse: UT EORUM BONA VENEANT QUI PROSCRIPTI SUNT: quo in numero Sex. Roscius non est: AUT EORUM QUI IN ADVERSARIORUM PRAESIDIIS OCCISI SUNT. Dum praesidia ulla fuerunt, in Sullae praesidiis fuit. Posteaquam ab armis recesserunt, in summo otio rediens a caena Romae occisus est. Si lege, bona quoque lege venisse fateor; sin autem constat contra omnes non modo veteres leges, verum etiam novas occisum esse, bona quo jure aut quo modo aut qua lege venierint, quaero. XLIV. In quem hoc dicam, quaeris, Eruci? Non in eum quem vis et putas. Nam Sullam et oratio mea ab initio et ipsius eximia virtus omni tempore purgavit. Ego haec omnia Chrysogonum fecisse dico, ut ementiretur, ut malum civem Roscium fuisse fingeret, ut eum apud adversarios occisum esse diceret, ut hisce de rebus a legatis Amerinorum doceri L. Sullam passus non sit. Denique etiam illud suspicor, omnino haec bona non venisse; id quod postea, si per vos, judices, licitum erit, aperietur. Opinor enim esse in lege, quam ad diem proscriptiones venditionesque fiant; nimirum ad KALENDAS JUNIAS. Aliquot post menses et homo occisus est, et bona venisse dicuntur. Profecto aut haec bona in tabulas publicas nulla redierunt nosque ab isto nebulone facetius eludimur quam putamus; aut, si redierunt, tabulae publicae corruptae aliqua ratione sunt. Nam lege quidem bona venire non potuisse constat. Intelligo me ante tempus, judices, haec scrutari et propemodum errare, qui, quum capiti Sex. Roscii mederi debeam, reduviam curem. Non enim laborat de pecunia; non ullius rationem sui commodi ducit; facile egestatem suam se laturum putat, si hac indigna suspicione et ficto crimine liberatus sit. Verum quaeso a

43. *Valeria*] This is the Lex which was proposed by the interrex, L. Valerius Flaccus, a tool of L. Sulla (B.C. 83), "ut omnia quaecunque ille fecisset essent rata" (Contra Rull. iii. 2); and "ut dictator quem vellet civium indicta caussa posset occidere" (De Leg. i. 15). See also Plutarch (Sulla, c. 33), and Appian (B. C. i. 97); and Vol. I. Ver. ii. 3. c. 35.

novi nec scio,] 'I neither know what is in the law nor do I know its name—for they say that it is there written.' See c. 47: "sciunt ii qui me norunt."

44. *nimirum ad Kal.*] It is said that 'ad' is not in some MSS., and it might be omitted.

reduviam curem.] The form of this word may be compared with 'exuviae.' 'Red' is 're.' Reduvia is a receding of the skin from the nails, as it is said; a trifling disease. Accordingly it became a proverb, to neglect a greater disease to cure a less. The passages which explain the word are collected in Forcellini.

vobis, judices, ut haec pauca quae restant ita audiatis ut partim me dicere pro me ipso putetis, partim pro Sex. Roscio. Quae enim mihi ipsi indigna et intolerabilia videntur, quaeque ad omnes, nisi providemus, arbitror pertinere, ea pro me ipso ex animi mei sensu ac dolore pronuntio. Quae ad hujus vitae casum caussamque pertineant et quid hic pro se dici velit et qua conditione contentus sit, jam in extrema oratione nostra, judices, audietis. XLV. Ego haec a Chrysogono mea sponte, remoto Sex. Roscio, quaero: primum, quare civis optimi bona venierint: deinde, quare hominis ejus, qui neque apud adversarios occisus est, bona venierint, quum in eos solos lex scripta sit: deinde, quare aliquanto post eam diem venierint, quae dies in lege praefinita est: deinde cur tantulo venierint. Quae omnia si, quemadmodum solent liberti nequam et improbi facere, in patronum suum voluerit conferre, nihil egerit. Nemo est enim qui nesciat propter magnitudinem rerum multa multos partim imprudente L. Sulla commisisse. Placet igitur in his rebus aliquid imprudentia praeteriri? non placet, judices, sed necesse est. Etenim si Juppiter optimus maximus, cujus nutu et arbitrio caelum, terra mariaque reguntur, saepe ventis vehementioribus aut immoderatis tempestatibus aut nimio calore aut intolerabili frigore hominibus nocuit, urbes delevit, fruges perdidit; quorum nihil pernicii caussa divino consilio, sed vi ipsa et magnitudine rerum factum putamus; at contra commoda quibus utimur lucemque qua fruimur, spiritumque quem ducimus ab eo nobis dari atque impertiri videmus; quid miramur L. Sullam, quum solus rem publicam regeret orbemque terrarum gubernaret imperiique majestatem, quam armis receperat, legibus confirmaret, aliqua animadvertere non

ex animi mei sensu] 'Et animi mei sensu.' Klotz.

45. *qui neque apud adversarios*] Hotmann inserted 'neque proscriptus' between 'qui' and 'neque,' because something is wanting, and Asconius teaches him that 'neque' is always followed by a second 'neque,' which is not true. All the editors that I know of have accepted Hotmann's interpolation, to justify which he cites the Lex (c. 43). It is possible that something is lost; and we may admit that without receiving two spurious words into the text.

partim imprudente] To which somebody, it is not known who, prefixed 'partim conivente,' as it stands in some editions. The difficulty in 'partim' is the imputation on Sulla; for when Cicero says 'partim imprudente,' he imputes to Sulla knowledge of some things. His argument seems to require him to say that many persons did many things without Sulla's knowledge; and Garatoni's conjecture that 'partim' should be 'privatim,' is worth notice. The word 'partim' is certainly wrong. What he says after shows this: 'aliquid imprudentia praeteriri.' 'Placet' means, 'are you satisfied' or 'content?'

Etenim si Juppiter—adepta non sit.] There are many passages in Cicero which good taste turns away from. But I know none worse than this.

pernicii caussa] This is Gellius' reading (ix. 14), who says: "sic autem *dies dii* a veteribus declinatum est; ut *fames fami, pernicies pernicii, progenies progenii, luxuries luxurii, acies acii.*"

potuisse? nisi hoc mirum est, quod vis divina assequi non possit, si id mens humana adepta non sit. Verum ut haec missa faciam quae jam facta sunt, ex iis quae nunc maxime fiunt, nonne quivis potest intelligere omnium architectum et machinatorem unum esse Chrysogonum, qui Sex. Roscii nomen deferendum curavit? hoc judicium, cujus honoris caussa accusare se dixit Erucius?

Desunt non paucà.

* * in vico Pallacine * * [maxime metu ut Sullam scilicet] * * se * * in Veientanam * * manu praedia praediis * * hic ego audire istos cupio * * XLVI. Aptam et ratione dispositam se habere existimant, qui in Salentinis aut in Bruttiis habent, unde vix ter in anno audire nuntium possunt.

Alter tibi descendit de palatio et aedibus suis: habet animi relaxandi caussa rus amoenum et suburbanum, plura praeterea praedia, neque tamen ullum nisi praeclarum et propinquum: domus referta vasis Corinthiis et Deliacis, in quibus est authepsa illa, quam tanto pretio nuper mercatus est ut qui praetereuntes pretium enumerari audiebant fundum venire arbitrarentur. Quid praeterea caelati argenti, quid stragulae vestis, quid pictarum tabularum, quid signorum, quid marmoris apud illum putatis esse? Tantum scilicet quantum e multis splendidisque familiis in turba et rapinis coacervari una in domo potuit. Familiam vero quantam et quam variis cum artificiis habeat, quid ego dicam? Mitto hasce artes vulgares, coquos, pistores, lecticarios; animi et aurium caussa tot homines habet ut quotidiano cantu vocum et nervorum et tibiarum nocturnisque conviviis tota vicinitas personet. In hac vita, judices, quos sumptus quotidianos, quas effusiones fieri putatis? Quae vero convivia? honesta, credo, in ejusmodi domo: si domus haec habenda est potius quam officina nequitiae et diversorium flagi-

Erucius?] Here there is a gap in the MSS. Lambinus gives a hint of what is left out. With 'alter tibi' (c. 46) Cicero returns to Chrysogonus, who is said to have had a house on the Palatine. 'Alter tibi' means, 'Here you see the other coming down.'

46. *relaxandi*] Some MSS. omit this word. It is hard to say whether it is more likely to be genuine, or an interpolation. 'Animi caussa' is a common Roman expression (Caesar, B. G. v. 13, and Plautus), but it is elliptical.

authepsa] This Greek word means 'self-cooker,' or something of the kind. The 'self-cooker' seems to have been also a work of art, in which there is nothing surprising, for art and a cooking utensil may be reconciled. "The luxury of the Romans in costly vessels is sufficiently known. Compare C. A. Böttiger's Sabina, Vol. II. p. 29, where also the 'self-cooker' here mentioned has received its due consideration." Klotz. —'enumerari:' perhaps it should be 'numerari,' for some MSS. have 'numerare.' But the whole passage is doubtful. Klotz has 'praetereuntes quod praeco enumeraret audiebant,' which seems to be patched up from the MSS. It is Latin, but there is no sense in it; and that is some objection to it. A 'praeco' is not said 'enumerare.'—'stragulae:' see Vol. I. Ver. ii. 2. c. 14.—'artificiis:' means 'arts' as in Ver. ii. 4. c. 21.—'lecticarii:' Ver. ii. 5. c. 11.

tiorum omnium. Ipse vero quemadmodum composito et delibuto capillo passim per forum volitet cum magna caterva togatorum, videtis, judices. Etiam videtis ut omnes despiciat, ut hominem prae se neminem putet, ut se solum beatum, solum potentem putet. Quae vero efficiat et quae conetur, si velim commemorare, vereor, judices, ne quis imperitior existimet me caussam nobilitatis victoriamque voluisse laedere; tametsi meo jure possum, si quid in hac parte mihi non placeat, vituperare. Non enim vereor ne quis alienum me animum habuisse a caussa nobilitatis existimet. XLVII. Sciunt ii qui me norunt me pro illa tenui infirmaque parte, posteaquam id, quod maxime volui, fieri non potuit ut componeretur, id maxime defendisse, ut ii vincerent qui vicerunt. Quis enim erat qui non videret humilitatem cum dignitate de amplitudine contendere? quo in certamine perditi civis erat, non se ad eos jungere quibus incolumibus et domi dignitas et foris auctoritas retineretur. Quae perfecta esse et suum cuique honorem et gradum redditum gaudeo, judices, vehementerque laetor: eaque omnia Deorum voluntate, studio populi Romani, consilio et imperio et felicitate L. Sullae gesta esse intelligo. Quod animadversum est in eos qui contra omni ratione pugnarunt, non debeo reprehendere; quod viris fortibus, quorum opera eximia in rebus gerendis exstitit, honos habitus est, laudo. Quae ut fierent idcirco pugnatum esse arbitror, meque in eo studio partium fuisse confiteor. Sin autem id actum est et idcirco arma sumpta sunt ut homines postremi pecuniis alienis locupletarentur et in fortunas unius cujusque impetum facerent, et id non modo re prohibere non licet, sed ne verbis quidem vituperare, tum vero in isto bello non recreatus neque restitutus, sed subactus oppressusque populus Romanus est. Verum longe aliter est. Nihil horum est, judices. Non modo non laedetur caussa nobilitatis, si istis hominibus resistetis, verum etiam

Etiam videtis ut] Orelli has 'Etiam videtis judices ut.' One would be glad to be rid of this second 'etiam videtis.' Klotz has 'videtis, judices, et unum videtis ut;' but he does not tell us where he gets many of his good things from.

meo jure] See Vol. I. Ver. ii. 5. c. 1; and Terence Adelp. (i. 1, 26):—

"Non necesse habeo omnia
Pro meo jure agere."

47. *pro illa—parte,*] 'H. l. aliquid excidisse ratus est Garat.;' Orelli. I suppose that he did not understand it. Lambinus explains it right: 'so far as my small weak means would permit.' 'Ille' is so used.

homines postremi] Manutius cites a like expression by M. Brutus in his letters to Cicero; but these letters are no authority. It must however mean 'the lowest or worst men.' There is a better example of 'postremi' in the speech of C. Gracchus (Meyer, Frag. Or. Rom. p. 231; Gell. xv. 12) in his 'contio' to the people, after his return from Sardinia: "Si ulla meretrix domum meam introivit aut cujusquam servulus propter me solicitatus est, omnium nationum postremissimum nequissimumque existimatote." The word 'nationum' is probably corrupt.

ornabitur. XLVIII. Etenim qui haec vituperare volunt, Chrysogonum tantum posse queruntur; qui laudare volunt, concessum ei non esse commemorant. Ac jam nihil est quod quisquam aut tam stultus aut tam improbus sit qui dicat: Vellem quidem liceret: hoc dixissem: Dicas licet. Hoc fecissem: Facias licet: nemo prohibet. Hoc decrevissem: Decerne, modo recte: omnes approbabunt. Hoc judicassem: laudabunt omnes, si recte et ordine judicaris. Dum necesse erat resque ipsa cogebat, unus omnia poterat; qui posteaquam magistratus creavit legesque constituit, sua cuique procuratio auctoritasque est restituta. Quam si retinere volunt ii qui recuperarunt, in perpetuum poterunt obtinere. Sin has caedes et rapinas et hos tantos tamque profusos sumptus aut facient aut approbabunt, nolo in eos gravius quidquam ne ominis quidem caussa dicere; unum hoc dico: nostri isti nobiles, nisi vigilantes et boni et fortes et misericordes erunt, iis hominibus in quibus haec erunt ornamenta sua concedant necesse est. Quapropter desinant aliquando dicere male aliquem locutum esse, si quis vere ac libere locutus sit; desinant suam caussam cum Chrysogono communicare: desinant, si ille laesus sit, de se aliquid detractum arbitrari: videant ne turpe miserumque sit eos qui equestrem splendorem pati non potuerunt, servi nequissimi dominationem ferre posse. Quae quidem dominatio, judices, in aliis rebus antea versabatur. Nunc verò quam viam munitet, quod iter affectet, videtis: ad fidem, ad jusjurandum, ad judicia vestra, ad id quod solum prope in civitate sincerum sanctumque restat. Hicne etiam sese putat aliquid posse Chrysogonus, hic etiam potens esse vult? O rem miseram atque acerbam! Neque mehercules hoc indigne fero, quod verear ne quid possit; verum quod ausus est, quod speravit sese apud tales viros aliquid ad perniciem posse innocentis, id ipsum queror. XLIX. Idcircone experrecta nobilitas armis atque

48. *magistratus creavit*] This is a common Roman expression applied to him who holds the comitia, and declares the elections. It is here said of L. Sulla, who after he had settled affairs, restored the constitution with some changes. The 'ii qui recuperarunt' are more distinctly mentioned in the beginning of c. 49.

nostri isti nobiles,] No variation is mentioned, but I suppose that 'nostri' should be 'vostri.' Cicero was not yet 'nobilis.' He could however say 'nostri' in a more general sense, meaning the Roman 'nobiles' generally.

equestrem splendorem] The equites were the body from whom the judices were chosen, until Sulla's legislation gave the office to the senators. (Vol. i. Excurs. Judicia.)

viam munitet,] He uses what is called the frequentative form of the crude form 'muni.' 'Munire viam,' 'to build a road,' is the common Roman expression; for their best roads were a construction (Vol. I. Verr. ii. 3. c. 68). 'Iter, viam affectare' is another common Roman expression, as in Virgil (Georg. iv. 562), 'viamque affectat Olympi;' and in Terence, Hauton.:—

"ad dominas qui affectant viam"
(ii. 2. 60).

ferro rem publicam recuperavit ut ad libidinem suam liberti servulique nobilium bona, fortunas vestras nostrasque vexare possent? Si id actum est, fateor me errasse qui hoc maluerim: fateor insanisse qui cum illis senserim; tametsi inermis, judices, sensi. Sin autem victoria nobilium ornamento atque emolumento rei publicae populoque Romano debet esse, tum vero optimo et nobilissimo cuique meam orationem gratissimam esse oportet. Quod si quis est qui et se et caussam laedi putet, quum Chrysogonus vituperetur, is caussam ignorat, se ipsum prope non novit. Caussa enim splendidior fiet, si nequissimo cuique resistetur. Ille improbissimus Chrysogoni fautor, qui sibi cum illo rationem communicatam putat, laeditur quum ab hoc splendore caussae separatur.

Verum haec omnis oratio, ut jam ante dixi, mea est: qua me uti res publica et dolor meus et istorum injuria coegit. Sed Roscius horum nil indignum putat: neminem accusat: nihil de suo patrimonio queritur. Putat homo imperitus morum, agricola et rusticus, ista omnia quae vos per Sullam gesta esse dicitis, more, lege, jure gentium facta: culpa liberatus et crimine nefario solutus cupit a vobis discedere. Si hac indigna suspicione careat, animo aequo se carere suis omnibus commodis dicit. Rogat oratque te, Chrysogone, si nihil de patris fortunis amplissimis in suam rem convertit; si nulla in re te fraudavit; si tibi optima fide sua omnia concessit, adnumeravit, appendit; si vestitum quo ipse tectus erat, annulumque de digito suum tibi tradidit; si ex omnibus rebus se ipsum nudum neque praeterea quidquam excepit; ut sibi per te liceat innocenti amicorum opibus vitam in egestate degere. L. Praedia mea tu possides; ego aliena misericordia vivo: concedo et quod animus aequus est et quia necesse est. Mea domus tibi patet, mihi clausa est: fero. Familia mea maxima uteris, ego servum habeo nullum: patior et ferendum puto. Quid vis amplius, quid insequeris, quid oppugnas, qua in re tuam voluntatem laedi a me putas, ubi tuis commodis officio, quid tibi obsto? Si spoliorum caussa vis hominem occidere, spoliasti: quid quaeris amplius? Si inimicitiarum; quae sunt tibi inimicitiae cum eo cujus ante praedia possedisti quam ipsum cognosti? Sin metuis; ab eone aliquid metuis,

49. *in suam rem convertit:*] 'If he converted no part of his patrimonial property to his own use.' Our English expression is pure Latin. 'Conversion' has with us a legal sense, which is the same, and is used to express the act of a man who finds or is supposed to find another man's property, using it as his own, which is the foundation of the action of trover (finding) and conversion.

annulumque—tradidit;] There is no certainty in this reading. It is a piece of patchwork. Some of the MSS. have 'annulumque deditos (dedit os) suum tibi.'

50. *ab eone—metuis,*] There is a reading 'metuas,' and perhaps it is right.

quem vides ipsum ab sese tam atrocem injuriam propulsare non posse? Sin, quod bona quae Roscii fuerunt tua facta sunt, idcirco hunc illius filium studes perdere, nonne ostendis id te vereri, quod praeter ceteros tu metuere non debeas, ne quando liberis proscriptorum bona patria reddantur? Facis injuriam, Chrysogone, si majorem spem emptionis tuae in hujus exitio ponis quam in his rebus quas L. Sulla gessit. Quod si tibi caussa nulla est cur hunc miserum tanta calamitate affici velis; si tibi omnia sua praeter animam tradidit, nec sibi quidquam paternum ne monumenti quidem caussa reservavit; per Deos immortales, quae ista tanta crudelitas est, quae tam fera immanisque natura? Quis umquam praedo fuit tam nefarius, quis pirata tam barbarus, ut, quum integram praedam sine sanguine habere posset, cruenta spolia detrahere mallet? Scis hunc nihil habere, nihil audere, nihil posse, nihil umquam contra rem tuam cogitasse; et tamen oppugnas eum quem neque metuere potes neque odisse debes nec quidquam habere jam reliqui vides quod ei detrahere possis: nisi hoc indignum putas, quod vestitum sedere in judicio vides, quem tu e patrimonio tamquam e naufragio nudum expulisti. Quasi vero nescias hunc et ali et vestiri a Caecilia Balearici filia, Nepotis sorore, spectatissima femina; quae quum patrem clarissimum, amplissimos patruos, ornatissimum fratrem haberet, tamen, quum esset mulier, virtute perfecit ut, quanto honore ipsa ex illorum dignitate afficeretur, non minora illis ornamenta ex sua laude redderet. LI. An quod diligenter defenditur, id tibi indignum facinus videtur? Mihi crede, si pro patris ejus hospitiis et gratia vellent omnes hujus hospites adesse et auderent libere defendere, satis copiose defenderetur. Sin autem pro magnitudine injuriae proque eo quod summa res publica in hujus periculo tentatur, haec omnes vindicarent, consistere mehercule vobis isto in loco non liceret. Nunc ita defenditur, non sane ut moleste

reservavit;] '*Servavit*, Cdd. aliqui.' Orelli. Either might do, but the meaning is not the same. See Vol. I. Ver. ii. 5. c. 30. Klotz has 'clam reservavit.'

Caecilia] See c. 10.

51. *summa res publica*] 'Sic Cdd. Ven. Ju. Grut. seqq.—*summa rei publicae*, Crat. L.' (Orelli.) Both 'summa res publica' and 'summa rei publicae' are Latin. In De Leg. (iii. 16) we have "in summa re publica nobiscum versari quam in municipali maluisset," where 'summa respublica' is opposed to 'municipalis,' as in the Verr. ii. 2. c. 61, it is opposed to 'provincia.' 'Summa' as a noun is a unity, comprehending all the parts which are comprised in the notion of a thing, as 'summa judicii' (Pro Quintio, c. 9), which is explained by 'caussa tota.' 'Summa belli' occurs in Livy (xxxii. 17), and in Caesar, B. G. i. 41. In the passage in the Verrine orations it is perhaps not certain what the MSS. readings are, whether 'res publica' or 'rei publicae.' There is also the expression 'summa res.' We can translate 'summa res publica' by a 'very great state,' just as we translate 'summus vir, imperator,' the same way by 'very great,' or 'greatest.' 'Summa rei publicae' is all the interests of any state.

ferre adversarii debeant neque ut se potentia superari putent. Quae domi gerenda sunt, ea per Caeciliam transiguntur: fori judiciique rationem Messala, ut videtis, judices, suscepit: qui si jam satis aetatis atque roboris haberet, ipse pro Sex. Roscio diceret. Quoniam ad dicendum impedimento est aetas et pudor qui ornat aetatem, caussam mihi tradidit, quem sua caussa cupere ac debere intelligebat: ipse assiduitate, consilio, auctoritate, diligentia perfecit ut Sex. Roscii vita, erepta de manibus sectorum, sententiis judicum permitteretur. Nimirum, judices, pro hac nobilitate pars maxima civitatis in armis fuit: haec acta res est uti nobiles restituerentur in civitatem qui hoc facerent, quod facere Messalam videtis; qui caput innocentis defenderent: qui injuriae resisterent; qui quantum possent in salute alterius quam in exitio mallent ostendere. Quod si omnes qui eodem loco nati sunt facerent, et res publica ex illis et ipsi ex invidia minus laborarent.

LII. Verum si a Chrysogono, judices, non impetramus ut pecunia nostra contentus sit, vitam ne petat; si ille adduci non potest ut, quum ademerit nobis omnia, quae nostra erant propria, ne lucem quoque hanc quae communis est eripere cupiat; si non satis habet avaritiam suam pecunia explere, nisi etiam crudelitate sanguinis perlitus sit, unum perfugium, judices, una spes reliqua est Sex. Roscio, eadem quae rei publicae, vestra pristina bonitas et misericordia; quae si manet, salvi etiam nunc esse possumus. Sin ea crudelitas, quae hoc tempore in re publica versata est, vestros quoque animos, id quod fieri profecto non potest, duriores acerbioresque reddidit, actum est, judices: inter feras satius est aetatem degere quam in hac tanta immanitate versari. Ad eamne rem vos reservati estis, ad eamne rem delecti ut eos condemnaretis quos sectores ac sicarii jugulare non potuissent? Solent hoc boni imperatores facere, quum praelium committunt, ut in eo loco quo fugam hostium fore arbitrentur milites collocent, in quos, si qui ex acie

Messala,] He may be the man who is mentioned in the Brutus (c. 70), M. Valerius Messala, of whom Cicero says: "M. Messala minor natu quam nos, nullo modo inops, sed non nimis ornatus genere verborum: prudens, acutus, minime incautus patronus, in caussis cognoscendis componendisque diligens, magni laboris, multae operae multarumque caussarum." Messala was a patrician. Cicero says that he undertook all the trouble of this affair ('fori judiciique rationem'), except the speech.

pro hac nobilitate] In defence of the nobles, who are here before me, among whom was Messala. The party of Marius and Cinna got possession of the city when Sulla was carrying on the war against Mithridates. They murdered the consuls Octavius and Merula, and all the nobles of the opposite party whom they could seize (Plutarch, Marius, c. 42, &c.).

52. *perlitus*] 'Sic Cdd. nisi quod multi, Ven. Iu. Crat. *praeditus*.' Orelli. Klotz has 'praeditus.' It is hard to choose. The whole expression 'crudelitate sanguinis,' &c., is strange.

eadem quae rei publicae,] 'Eademque rei publicae.' Klotz.

fugerint, de improviso incidant. Nimirum similiter arbitrantur isti bonorum emptores vos hic, tales viros, sedere qui excipiatis eos qui de suis manibus effugerint. Dii prohibeant, judices, ut hoc quod majores consilium publicum vocari voluerunt, praesidium sectorum existimetur. An vero, judices, vos non intelligitis nihil aliud agi nisi ut proscriptorum liberi quavis ratione tollantur, et ejus rei initium in vestro jurejurando atque in Sex. Roscii periculo quaeri? Dubium est ad quem maleficium pertineat, quum videatis ex altera parte sectorem, inimicum, sicarium eumdemque accusatorem hoc tempore, ex altera parte egentem, probatum suis filium, in quo non modo culpa nulla, sed ne suspicio quidem potuit consistere? Numquid hic aliud videtis obstare Roscio, nisi quod patris bona venierunt?

LIII. Quod si id vos suscipitis et ad eamdem rem operam vestram profitemini; si idcirco sedetis ut ad vos adducantur eorum liberi quorum bona venierunt; cavete, per Deos immortales, judices, ne nova et multo crudelior per vos proscriptio instaurata esse videatur. Illam priorem, quae facta est in eos qui arma capere potuerunt, tamen senatus suscipere noluit, ne quid acrius quam more majorum comparatum est publico consilio factum videretur: hanc vero, quae ad eorum liberos atque infantium puerorum incunabula pertinet, nisi hoc judicio a vobis rejicitis et aspernamini, videte, per Deos immortales, quem in locum rem publicam perventuram putetis.

Homines sapientes et ista auctoritate et potestate praeditos, qua vos estis, ex quibus rebus maxime res publica laborat, iis maxime mederi convenit. Vestrum nemo est quin intelligat populum Romanum, qui quondam in hostes lenissimus existimabatur, hoc tempore domestica crudelitate laborare. Hanc tollite ex civitate, judices, hanc pati nolite diutius in hac re publica versari; quae non modo id habet in se mali, quod tot cives atrocissime sustulit, verum etiam hominibus lenissimis ademit misericordiam consuetudine incommodorum. Nam quum omnibus horis aliquid atrociter fieri videmus aut audimus, etiam qui natura mitissimi sumus, assiduitate molestiarum sensum omnem humanitatis ex animis amittimus.

53. *Quod si id*] I infer from what Orelli says that 'id' is not in all the MSS., but probably it ought to be in. Yet 'quod' is the relative, and refers to the sentence, 'An vero judices,' &c.; and 'id' is the 'quod' repeated. In c. 41 there is the reading 'quod a vobis hoc pugnari,' &c. This expression has often been misunderstood. See Vol. I. Verr. ii. 1. c. 26, 'quod ubi ille id agi,' &c., which differs in some respects from this; and Ver. ii. 1. c. 46.

PRO Q. ROSCIO COMOEDO

ORATIO.

INTRODUCTION.

C. FANNIUS CHAEREA (c. 10) had a slave Panurgus. It was agreed between Chaerea and Q. Roscius, the distinguished actor, that this slave should be their joint property; that Roscius should instruct him in his art, and that they should divide the profits of his labours. Panurgus, after being taught by Roscius, appeared on the stage with great success; but shortly after he was killed by C. Flavius of Tarquinii, in what manner it is not said, nor is it material to the case (c. 11). Roscius commenced an action against Flavius for the value of the slave ('judicio damni injuria constituto'), and his partner Chaerea was his agent in the action ('cognitor'). Before it came to a trial, Roscius agreed with Flavius to take in satisfaction of his demand a piece of land (c. 11, 12), at a time when the value of land was low. Roscius said that he made this bargain on his own account only, and for his own share in the slave, and that Chaerea might have done the same if he liked. Chaerea said that Roscius made the bargain on the partnership account, and that accordingly half of the value of the land, which he estimated at 100,000 sestertii, was due to him. This, says Cicero, was the whole question: "Utrum Roscius cum Flavio de sua parte an de tota societate fecerit pactionem" (c. 12). If Roscius received this land on the partnership account, Cicero admits that he must account for it to his partner; but he has an argument (c. 12) to show that Roscius made the 'pactio' with Flavius solely on his own account, and he affirms that he could do this.

An attempt had been made to settle this matter between Roscius and Fannius some years before this trial, but the facts are rather obscurely told by Cicero (c. 13, &c.). Fannius had claimed a sum of money from Roscius, and there had been a 'stipulatio,' and a 'restipulatio' between the parties, for a 'restipulatio' (c. 13) implies a 'stipulatio.' In the

'restipulatio' Chaerea was the 'repromissor' ("repromittis abhinc triennium Roscio"), and of course Roscius was the 'restipulator.' The 'repromissio' of Chaerea was "Quod a Flavio abstulero, partem dimidiam inde Roscio me soluturum spondeo." Roscius had therefore restipulated in this form: "Quod a Flavio abstuleris, partem dimidiam inde mihi soluturum spondes?" and the 'repromissio' was the answer to this. But the 'restipulatio' was only the original 'stipulatio,' with a change of names. Chaerea therefore had challenged Roscius ('sponsione provocavit') in this form: "Quod a Flavio abstuleris, partem dimidiam inde mihi soluturum spondes?" to which Roscius had said 'spondeo.'

The nature of the 'restipulatio' and the 'repromissio' may be safely inferred from Cicero; but a passage of Gaius (iv. 166), makes it clearer. The particular meaning of that passage does not concern us. He says: "Cum judex id exploraverit et forte secundum me judicatum sit, adversarium quidem et sponsionis et restipulationis summas, quas cum eo feci, condemnat, et convenienter me sponsionis et restipulationis quae mecum factae sunt absolvit." We may conclude that it was not necessary that the sum mentioned in the 'stipulatio' and the 'restipulatio' should be the same.

Cicero, after speaking of the 'restipulatio' and the 'repromissio,' asks Chaerea what he could get from Flavius, if Flavius owed nothing; for Chaerea admitted that Flavius had paid all, when he contended that Roscius had compounded with him on behalf of the partnership. Again, Cicero asks, why does Roscius by this 'restipulatio' claim the half of what Chaerea might get from Flavius, when the statement of Roscius was that he had compounded with Flavius on his own account, and was satisfied? Certainly these questions require an answer from both parties. C. Piso, who was the judex in this trial, and acted as an arbiter between the parties in the attempt at a settlement, requested ('rogavit') Roscius to give to Chaerea 100,000 sesterces (a number probably incorrect in the text), on the condition that if Chaerea got any thing from Flavius he should give Roscius one half (c. 13). And Cicero asks if this 'restipulatio' did not prove clearly that Roscius had compounded with Flavius only for himself. Roscius did not give 100,000, or any other sum, to Chaerea, but promised 100,000, or some other sum to Chaerea, in answer to Chaerea's 'stipulatio,' but only conditionally. He was willing to give Chaerea something for his pains, if Chaerea gave him half of what he should get from Flavius. But Cicero must have seen that this argument is very bad for his client; for if Chaerea got nothing, Roscius would pay nothing, and he would keep what he had got from Flavius. And if Roscius was a knave, and had received all that was due from Flavius, he might very safely make this bargain. The 'restipulatio' could not be denied, for the proof of it was

in writing, and Cicero had to explain this fact. He then proves, or tries to prove (c. 14, &c.), that Chaerea brought his action against Flavius for the loss of Panurgus, and got 100,000 sestertii from him, which of course would prove that he had no demand against Roscius. He would have to give one half to Roscius, and Roscius would have to pay him what he had promised. We hear nothing more of this transaction in the speech. All we know is that Chaerea now sued Roscius for 50,000 sestertii, a clear fixed sum ('pecunia certa,' c. 4); and the origin or foundation of the demand ('caussa') was this, Whether Roscius received what he did receive from Flavius for his own share, or on the joint account?

Now the question is, what action did Chaerea bring against Roscius? As it was a 'pecunia certa,' Cicero affirms that the demand must be founded either on a loan, or an 'expensilatio,' or a 'stipulatio.' It was no loan; it was no 'expensilatio,' because there was no entry ('expensilatio') in the books of Chaerea, nor was it founded on a 'stipulatio;' for there was no evidence of a 'stipulatio.' What then could the demand be? It was not a demand for a general partnership account, but a demand for a fixed sum. If there was no form of action for a definite sum of money in such a case as this, except the three forms which Cicero mentions, and if there was no evidence that would support any one of these forms of action, Chaerea had no case at all. But we may assume that he would not have brought his action without some show of right and of evidence to support it.

Several attempts have been made to explain this speech. One is by Unterholzner (*Zeitschrift für Geschicht. Rechtsw.*, i. p. 248). He observes that the matter of the suit is certainly a sum of 50,000 sestertii, which Chaerea demands of Roscius (c. 1); that Cicero attempts to show (c. 1—5) that Chaerea had no legal ground of action; and (c. 6—18) that looking at all the circumstances of the case, there was no probable ground of action. The beginning of the first part of the defence is lost, and the end of the second part also. It is chiefly from the fragment of the first part that we must endeavour to determine the nature of this action for a definite sum of money ('pecunia certa,' c. 5).

Unterholzner concludes that the action was either a 'condictio' or a proper 'actio in personam.' His notion of a 'condictio' is not exact, and it is unnecessary to say more about it. He concludes that the mode of proceeding was by an 'actio,' in which, as we see, C. Calpurnius Piso was judex. This was not an 'arbitrium,' but a 'judicium,' the difference between which is explained by Cicero (c. 4) as clearly as it can be explained. In a 'judicium' the plaintiff demands a clear, definite sum of money, and he either gets judgment for all his demand, or judgment against him. In the 'arbitrium' the demand was for what might appear to

be fairly due, and of course no fixed sum was demanded by the plaintiff. Accordingly we might conclude, as Unterholzner says, that this was an 'actio stricti juris,' tried before a judex.

Cicero, as already observed, says (c. 5) that an action for 'certa pecunia' could only be founded on three things: it must be either for money lent, or passed from the plaintiff to the defendant ('data,' 'numerata,' a loan), or the action must be founded on an 'expensilatio,' or on a 'stipulatio.' Unterholzner has an argument to show in what sense he supposes that Cicero may be considered as stating the law truly; but the argument is immaterial to us. The ultimate conclusion is that the demand of Fannius was founded on the Roman Literal Contract, as it was technically called, or in other words, on the entry in Chaerea's books ('literarum obligatio'). He adds that Fannius did not found his demand on a loan, nor on a 'stipulatio,' for if he had, "Cicero would not have touched the point so slightly as he did."

The real ground then, he concludes, must without all doubt have been an 'expensilatio,' and that all the first part of the speech must have been directed to confute the affirmation of an 'expensilatio.' This 'expensilatio' is the 'obligatio quae litteris contrahitur;' and Unterholzner concludes that the action must have been founded on an 'expensilatio.' This conclusion is the only one that we can admit, notwithstanding all that has since been written. Menard saw this very clearly, and has clearly expressed it in his commentary on this oration. Cicero denies an 'expensilatio,' but he does not deny that there was an entry in the 'adversaria' of Chaerea. He maintains that Chaerea could not support his action, because the entry in the 'adversaria' was not transferred into a regular 'codex.' Menard says: "Quaestio an id nomen quod in adversariis est, neque relatum in mundum, peti apud judicem possit." Unterholzner has made no remark on this matter of the 'adversaria,' on which the whole question turns.

It will assist the reader to understand this speech if the nature of some of these Roman contracts is explained; and though some things that will be said here are not directly pertinent to the matter, they will help materially to a right conception of the whole.

Those agreements to which the Romans gave the technical name of 'contractus' were divided into four classes (Gaius iii. 89): "harum (obligationum) quatuor genera sunt: aut enim re contrahitur obligatio, aut verbis, aut litteris, aut consensu."

An 'obligatio' is contracted 're,' by an act or fact, when the creditor lends something to the debtor, as 'pecunia numerata,' money, or wine, or any thing else; the intention of the transaction being that the thing which is lent shall become the property of the borrower, who must return things of the same kind and of the same value.

The 'obligatio verbis' is made by certain formal words in the way of question and answer, as, 'Dari spondes?' 'Spondeo' (iii. § 92). The words were necessary; they made the 'obligatio.' There must of course be evidence of the words, that is, evidence of the contract, which evidence was that of the witnesses who were present; and the evidence might be, and sometimes was, reduced to writing; but the solemn words alone were the contract.

The 'obligatio litteris' is also described by Gaius (iii. 128), but it may be that the character of the thing was somewhat changed in his time. The nature of this contract has been explained before (Vol. I. Verr. ii. 1. c. 38). This is the 'expensa lata' of Cicero, as Savigny has shown (Vermischte Schriften, Vol. I. p. 205, &c.). The contract was formed by the entry in the plaintiff's books; and this entry was the ground of his action. It has been a great difficulty with the critics to explain how an entry in the plaintiff's books could bind the defendant; for a man cannot be bound ('obligatus') in a contract, except by his consent. This is quite true; but the Romans supposed that if a man entered another in his books as his debtor, he had good reason for doing so. If he demanded payment of this book debt, he must of course prove it in some way. The entry in the books, according to Roman notions, and according to our notions, is a presumption of debt sufficient to sue on. If the debt is denied, proof of some kind must be given that the entry is a true entry. If both parties kept books properly, and both were honest, the books of the two parties would agree; but that would not always be the case. The Roman 'obligatio litteris' only referred to the act of the creditor, "qui expensum ferendo obligat" (Gaius iii. 138), who binds his debtor by entering a sum of money as due from him. In the case of the 'verborum obligationes,' that is, 'stipulationes,' the two parties must be present, for the contract consisted in the one saying the formal words, and the other replying in formal words. "But," says Gaius (iv. 138), "absenti expensum ferri potest;" which shows very clearly that some transaction must have always preceded the 'expensilatio,' and was the ground of the entry.

The examples of the 'litteris obligatio' in Gaius may be, as Savigny supposes, mere specimens, for he uses the word 'veluti.' However they are clear enough. He calls debts or accounts 'nomina transcriptitia' when the debt is changed in form, but not in substance. The first example is when the debt is transferred, as he expresses it, 'a re in personam,' or when a debt founded on a buying, or a hiring, or a partnership, is 'expensum latum,' which means entered in the book as a bare sum of money due. The debtor would not be bound by this simple act of the creditor. But the written entry is obviously a way of preserving a record of the transaction, and when such an entry is made

at a proper time and place, and when it is usual for people to make such entries in their books, it is very easy to conceive this entry as the thing on which the creditor sues; though it is equally plain that he must prove the existence of the debt. The absence of such an entry might in some cases be ground for presuming that no debt existed, if a demand were made; and if evidence of the debt were given, the omission of the entry might be some ground of presumption against the truth of the evidence.

The fourth class of 'obligationes' is those 'consensu,' which are buying and selling, letting and hiring, partnership and mandatum (Gaius iii. 135). They were called 'obligationes consensu,' because no particular form of agreement was required. It was sufficient for the parties to have agreed, and to have expressed their agreement in any form which would shew their intention.

Unterholzner is a good deal puzzled about this entry in the books; he cannot understand how the debtor could be bound by the creditor's act. But his essay was written before the MS. of Gaius was discovered.

Savigny in his essay on the literal contract and in the appendix (1849) to his original essay (p. 236), has summed up this matter very clearly, thus:

"The old literal contract was made complete as a formal transaction, not by an independent instrument, which had reference to this single transaction, but by the entry of a debt into the ledger; and it was certainly the entry by the creditor ('expensilatio'), which made the essence of the transaction, and gave to it its name; not the entry by the debtor ('acceptilatio'), which corresponded to the other.

"The legal transaction which thus originated, stood on the same line with a loan of money and a 'stipulatio,' since, like the other two, it established an independent 'certi condictio.' A loan itself certainly appeared also in the ledger as 'expensum,' but it did not operate as a literal contract, but in its original nature as 're contracta obligatio:' otherwise the loan would have been absorbed by the literal contract, and would never have appeared as an independent legal transaction.

"The literal contract must therefore always have another 'caussa' for its foundation, which by the entry would have the same character as a loan of money, since after the entry it was considered as if a sum of money had been lent to the debtor."

This is clear and undoubtedly true, at least the first and third paragraphs. Whether the whole of the second is true I am not sure.

It remains now to explain what a 'certi condictio' is, and then all will have been done that can be done to explain the nature of the question in this difficult oration. The following is in substance the explanation of Savigny (System &c., Vol. V. § 218, &c.).

Those 'civiles actiones' at Rome which originated in contracts or quasi-contracts, were divided into two kinds.—1. 'Actiones stricti juris,' also called 'condictiones:' and 2. 'Actiones bonae fidei.' The 'condictiones' were the strict actions or 'judicia.' The 'actiones bonae fidei' were 'arbitria.' The expression 'stricti juris actio' does not occur in the classical writers, nor in the classical jurists. It appears in the Institutions of Justinian (iv. 6. § 28). But the rarity of this term is explained by the fact that the Romans had another name for these actions. They called them 'condictiones.' The 'condictio' is a 'civilis actio in personam,' arising out of a contract or quasi-contract, provided it is also of the strict character, that is, if it is not brought within the range of the wider competence of the judex by the addition of the words 'ex fide bona.' This definition accordingly excludes from the limits of the 'condictiones' all 'honorariae actiones,' all 'actiones in rem,' all 'actiones' founded on 'delicta,' and all 'bonae fidei actiones.' In order to understand the nature of these 'condictiones,' we must first know what contracts or quasi-contracts could be the foundation of 'condictiones;' and secondly what kinds of 'condictiones' there were, and how they were distinguished by their several effects. Or in other words; if we assign a general name to a number of actions, we ought to be able to assign the general character of all these actions; and we ought also to be able to distinguish from one another the actions which are comprehended under the general name.

The investigation of Savigny is long, and it cannot be understood except by those who have some knowledge of Roman law: but the result may be understood. The principle which determines the possibility of a 'condictio' is this: an 'obligatio' is created between two persons, and at the same time the (defendant's) debtor's property is increased out of the plaintiff's property, who has a right to demand back what he once had, or an equivalent. The simplest case is a loan of money from one man to another; for a loan creates an 'obligatio,' a relation of debtor and creditor. The debtor's property is increased by the same amount that the creditor's is diminished; and the creditor has the right to demand back the same amount that he has lent.

With respect to the 'formulae' or forms of demand, there were only three classes of 'condictiones.' I. The 'condictio' for a fixed amount of money. II. The 'condictio' for a definite thing, except a sum of money. III. The 'condictio' for any object except the giving of a definite thing. (Savigny, System, &c., Beylage XIV.; No. XXXII.) It is only the first of these three 'condictiones' that we are concerned with here.

Cicero has said that there are only three causes for which a man can demand a definite sum of money in a strict 'judicium,' and that these are 'adnumeratio' ('datio'), 'expensilatio,' and 'stipulatio' (Pro Rosc. Com.

c. 4, 5). Though he does not use the word 'condictio,' he means the same action which in the classical jurists is named 'certi condictio,' or 'condictio si certum petatur.' The word 'adnumeratio' or 'datio' comprehends even the case of a 'depositum,' when it has been misappropriated by the person with whom it was deposited; and the case of a 'condictio indebiti,' or action for the recovery of money paid under the false opinion that it was due; and other cases, which belong to I. Cicero says nothing of the 'condictiones' of the two other classes, which is easily explained, for he is only speaking of the 'condictiones certi,' which arise out of contracts. But there are also 'actiones' which are 'condictiones certi,' and he has not mentioned them; at least if Savigny's explanation of the 'condictio certi' is true. But Savigny removes this objection satisfactorily. Cicero was not attempting to lay down any general theory of actions: he was stating only so much of the matter as belonged to the case before him. When then he speaks of the 'adnumeratio,' 'expensilatio,' 'stipulatio,' as the three only grounds of a 'condictio certi,' he must be understood to mean such a 'condictio' as he is speaking of in this oration. This was the case of a contract, and it would have been pure pedantry, as Savigny observes, if Cicero had mentioned the other cases of 'condictio certi,' which were foreign to the case. Each of the three cases, of which Cicero speaks, is mentioned as severally being sufficient ground for a 'condictio certi,' or action for a definite sum of money. Consequently even the 'stipulatio' alone is sufficient ground for such a 'condictio,' without supposing a loan to be the foundation of it. Indeed the facts of Cicero's case exclude the loan altogether; for the foundation of the whole was a partnership, and the claim of Chaerea, which arose out of this partnership and the transaction between Roscius and Flavius, could only be the foundation of a 'condictio certi' through the medium of an 'expensilatio' or of a 'stipulatio.' If there was neither of these causes of action, as Cicero says, neither 'expensilatio' nor 'stipulatio,' Chaerea must have had judgment against him; and his claim against Roscius ought to have been brought in another form, if he could find any. But Cicero merely denies that the 'expensilatio' was a proper 'expensilatio.' As already observed, he does not deny the entry in the 'adversaria,' which I understand to be the ground of Chaerea's action.

M. TULLII CICERONIS

PRO

Q. ROSCIO COMOEDO ORATIO.

Initium deest.

malitiam naturae, crederetur I. is scilicet vir optimus et singulari fide praeditus in suo judicio tabulis suis testibus uti conatur. Solent fere dicere, qui per tabulas hominis *** citi pecuniam expensam tulerunt: Egone talem virum corrumpere potui ut mea caussa falsum in codicem referret? Exspecto quam mox Chaerea hac oratione utatur: Egone hanc manum plenam perfidiae et hos digitos meos impellere potui ut falsum perscriberent nomen? Quod si ille suas proferet tabulas, proferet suas quoque Roscius. Erit in illius tabulis hoc nomen. At in hujus non erit. Cur potius illius quam hujus credetur? Scripsisset ille, si non jussu hujus expen-

1. This oration was delivered in the consulship of Cn. Octavius and M. Scribonius Curio, B.C. 76.

The beginning is lost, and there is something defective or corrupt where the word 'citi' stands. Cicero is talking about the entries in books, and he is arguing against the books of Chaerea being used as evidence in his favour. This makes the thing obscure. If the actio was founded on an 'expensilatio,' there must and ought to have been an entry in Chaerea's books, which must have been produced as the ground of the action. The entry (nomen) would not be evidence of the truth of the entry, but it would be evidence that if there was such a debt as Chaerea demanded, there was the entry that there ought to be. Cicero however says that if the entry (expensilatio) appeared in Chaerea's books, the corresponding entry (acceptilatio) would not appear in Roscius' books; and that there was no reason for giving more credit to the books of Chaerea than to the books of Roscius. For an honest man would enter his debts in his books; and if there was no entry in Roscius' books, that evidence was in his favour, as much as the entry in Chaerea's books was in his favour.—'iste scilicet,' Orelli.

si non jussu] The supposed question is: would Chaerea have made such an entry in his books, if Roscius had not done something (jussu) to authorize him? Here we see clearly that every 'expensilatio' or entry in a creditor's books against his debtor implies a 'caussa,' a ground, something that has preceded the entry and justifies it. It might be a verbal admission of the debt, an admission by letter, or in other ways. Chaerea, who managed the action for Roscius against

sum tulisset?—Non scripsisset hic quod sibi expensum ferri jussisset? Nam quemadmodum turpe est scribere quod non debeatur; sic improbum est non referre quod debeas. Aeque enim tabulae condemnantur ejus qui verum non rettulit, et ejus qui falsum perscripsit. Sed ego copia et facultate caussae confisus vide quo progrediar. Si tabulas C. Fannius accepti et expensi profert suas, in suam rem, suo arbitratu scriptas, quo minus secundum illum judicetis non recuso. Quis hoc frater fratri, quis parens filio tribuit, ut quodcumque rettulisset id ratum haberet? Ratum habebit Roscius. Profer. Quod tibi fuerit persuasum, huic erit persuasum: quod tibi fuerit probatum, huic erit probatum. Paullo ante M. Perpernae, P. Saturii tabulas poscebamus; nunc tuas, C. Fanni Chaerea, solius flagitamus, et quo minus secundum eas lis detur non recusamus. Quid ita non profers? Non conficit tabulas? Immo diligentissime. Non refert parva nomina in codices? Immo omnes summas. Leve et tenue hoc nomen? H-S CCCIↃↃↃ sunt. Quomodo tibi tanta pecunia extraordinaria jacet? quomodo H-S CCCIↃↃↃ in codice accepti et expensi non sunt? Pro dii immortales! essene quemquam tanta audacia praeditum qui, quod nomen referre in tabulas timeat, id petere audeat? quod in codicem injuratus referre noluit, id jurare

Flavius, must have known, one would suppose, whether he was suing on the partnership account or for Roscius only. If he was suing for Roscius only, it is hard to understand why he did not look out for himself at the same time.

Quis hoc frater fratri,] Klotz rightly maintains that the entry (expensilatio) in the creditor's books constituted the 'obligatio.' But he supposes that the debtor must admit the accuracy of the creditor's books, even when he had no entry in his own books, so long as he could not show in some other way that the entry was false. If this was Roman law, the world has been much mistaken in giving the Romans credit for good sense. He explains the words 'Quis hoc frater &c.,' as if he supposed there was a difficulty in them. I think nobody will want an explanation.

M. Perpernae,] M. Perperna seems to have been 'in consilio.' Saturius was Chaerea's 'patronus.' If the text is right, which is doubtful, the books of Perperna and Saturius had been called for; but why I do not know. There is authority both for the forms 'Perperna' and 'Perpenna.'

tuas,—solius] Terence (Hauton. i. 1. v. 76), has 'tot mea Solius soliciti sint caussa ut me unum expleant;' and Horace, Sat. i. 4. v. 22.—'secundum eas lis:' 'Lis,' says Varro (L. L. vii. 93), is the 'res in controversia.' Cicero (Pro Murena, c. 12) ridicules the lawyers for not being able to say whether the proper word was 'lis' or 'res.' It means here, 'judgment being given in favour of the plaintiff on his own evidence.' Manutius quotes Gellius (v. 10): 'si contra te lis data erit.' See c. 4, 'ut totam litem &c.'

pecunia extraordinaria] See Vol. I. Verr. ii. 1. c. 39. This may perhaps be mistranslated. It means: 'why do you allow so large a sum to be omitted in your books?' The question is, why does this amount lie (jacet) neglected and omitted (extraordinaria). As to 'jacet,' see c. 3.

injuratus—jurare in litem] There were various cases in which the 'jusjurandum in litem' was used. The judex could require from a party to a suit confirmation or evidence of his assertions upon oath, when he wanted evidence: and this was generally used for the purpose of ascertaining the value of the matter in dispute or the amount of the claim. Here, it seems, it was used as evidence of the claim itself. There is a title in the Digest (xii. 3) 'De in Litem jurando:' but it does not help to explain the practice in Cicero's time. Klotz quotes

in litem non dubitet? quod sibi probare non possit, id persuadere alteri conetur? II. Nimium cito ait me indignari de tabulis; non habere se hoc nomen in codice accepti et expensi relatum confitetur, sed in adversariis patere contendit. Usque eone te diligis et magnifice circumspicis, ut pecuniam non ex tuis tabulis sed ex adversariis petas? Suum codicem testis loco recitare arrogantiae est. Suarum perscriptionum et liturarum adversaria proferre non amentia est? Quod si eamdem vim, diligentiam auctoritatemque habent adversaria quam tabulae, quid attinet codicem instituere, conscribere, ordinem conservare, memoriae tradere litterarum vetustatem? Sed si, quod adversariis nihil credimus, idcirco codicem scribere instituimus, quod etiam apud omnes leve et infirmum est, id apud judicem grave et sanctum esse ducetur? Quid est quod negligenter scribamus adversaria? quid est quod diligenter conficiamus tabulas? qua de caussa? Quia haec sunt menstrua, illae sunt aeternae: haec delentur statim, illae servantur sancte: haec parvi temporis memoriam, illae perpetuae existimationis fidem et religionem amplectuntur: haec sunt dejecta, illae in ordinem confectae. Itaque

the Digest (4. 3. 17), and as usual with those who dip into the book, he misunderstands the passage. It confirms what I have said in the beginning of this note.

2. *adversariis*] The following is Keller's view of the Roman method of keeping books: The Adversaria was the day-book in which entries were made of various matters, which entries were copied into the Codex. The Adversaria were the notes and entries made at the time, the materials out of which the Codex was constructed. The 'Codex accepti et expensi,' which was kept by every honest Roman citizen, was a Cassabuch (cash-book), and it contained entries made in the order of time of all a man's receipts and expenditure, with a notice of the occasions on which they were made, and of the persons concerned. The 'Codex accepti et expensi,' says Keller, was simply this; and not a Contocurrent-book, which would contain the engagements of him who kept the book, with every several person, with a Debit and Credit for each, so that one could see at any time what the man owed and what was due to him, and so a balance could be struck at any time. Such a book cannot be kept without a Cassabuch; but a Cassabuch alone is all that persons require who are not engaged in varied and extensive transactions.—This is true enough as a practical matter; and it may be true of the Romans. The 'Codex accepti et expensi,' which every honest man was supposed to keep, was certainly something more formal than the Adversaria, which was only a book of memoranda, some of which might never require to be transferred into the Codex. But whatever Cicero may say, it was the better evidence for some purposes at least, though it may have not been legally considered such. An original entry is better evidence than the same entry when it is transferred into another book. Klotz has a fair note on the evidence of the Adversaria, the purport of which is to show that we must not exactly take Cicero at his word. He observes that if all use of the Adversaria as evidence was contrary to law, why did not Cicero say so, and that would have ended the affair. But it is not merely a question of the evidence of the Adversaria. The question is what is the cause of action. An 'expensilatio' in the Codex was a cause of action. An entry in the Adversaria may not have been a cause of action. There is nothing in this oration which prevents us from assuming that the credibility of the Adversaria as evidence referred to the cause of action.

dejecta,] There is said to be no other reading. It is easy to suggest 'disjecta,' (Orelli), which is opposed to 'in ordinem.' But 'dejecta' may be right; for to throw down a thing is to treat it carelessly. So the entries which are thrown down, if

adversaria in judicium protulit nemo: codicem protulit, tabulas recitavit. III. Tu, C. Piso, tali fide, virtute, gravitate, auctoritate ornatus ex adversariis pecuniam petere non auderes. Ego quae clara sunt consuetudine diutius dicere non debeo: illud vero quod ad rem vehementer pertinet quaero; quam pridem hoc nomen, Fanni, in adversaria rettulisti? Erubescit: quid respondeat nescit: quid fingat extemplo non habet. Sunt duo menses jam, dices.—Tamen in codicem acceptum et expensum referri debuit.—Amplius sunt sex menses.—Cur tamdiu jacet hoc nomen in adversariis? Quid si tandem amplius triennium est? quomodo, quum omnes qui tabulas conficiant menstruas paene rationes in tabulas transferant, tu hoc nomen triennium amplius in adversariis jacere pateris? Utrum cetera nomina in codicem accepti et expensi digesta habes an non? Si non, quomodo tabulas conficis? Si etiam, quamobrem, quum cetera nomina in ordinem referebas, hoc nomen triennio amplius, quod erat in primis magnum, in adversariis relinquebas? Nolebas sciri debere tibi Roscium. Cur scribebas?—Rogatus eras ne referres. Cur in adversariis scriptum habebas?

Sed haec quamquam firma esse video, tamen ipse mihi satisfacere non possum, nisi a C. Fannio ipso testimonium sumo hanc pecuniam ei non deberi. Magnum est quod conor: difficile est quod polliceor. Nisi eumdem et adversarium et testem habuerit Roscius, nolo vincat. IV. Pecunia tibi debebatur certa, quae nunc petitur per judicem; in qua legitimae partis sponsio facta est. Hic tu si amplius H-S

we may use the expression, into the Adversaria, are brought into order in the Codex.—'codicem protulit:' There is no nominative, as Manutius remarks, to 'protulit,' and an affirmative nominative must be got out of the 'nemo;' of which there are frequent examples.

3. *in codicem*, &c.] Manutius and others would change this into 'codicem accepti et expensi,' an expression which occurs shortly after, but as a definition of the Codex. Here the meaning of the text is to enter in the Codex receipts and expenditure, as Graevius rightly explains it. Cicero says that he ought to have entered his receipts and expenditure into the Codex.

Nolebas sciri] Cicero affirms that the debt claimed of Roscius was not in the Codex; but he admits that it was in the Adversaria. He is very dexterous in avoiding any admissions that are against himself; but it is plain from what he says that there was an entry in the Adversaria, which was not transferred to the Codex, and Chaerea was suing on this entry. This explains why Cicero denies that there was an 'expensilatio.' His argument is that the entry in the Adversaria is not enough to sue on.

4. *legitimae partis*] Cicero has just said that a fixed or ascertained amount of money was claimed by Roscius, and he calls it 'pecunia certa.' This is what Gaius (iv. 171) calls 'pecunia certa credita;' and he says that the 'sponsio' of a third part was required in the case of a 'stipulatio' (compare iv. 171, and iv. 13; and Quintilian, Inst. Lib. iv. c. 2). In fact the 'stipulatio' was a fiction of a debt. Cicero here observes that the 'legitimae partis sponsio' was used in the three cases of 'adnumeratio,' 'expensilatio, and 'stipulatio.' "The peculiar and most important effect of this kind of Condictio (No. 1. See the Introduction) was the 'sponsio tertiae partis,' which was not used merely in the case of a loan, but in every Condictio, the object of which was to recover an ascertained amount of money. Cicero also calls it 'legitimae partis sponsio.'

nummo petisti quam tibi debitum est, caussam perdidisti; propterea quod aliud est judicium, aliud arbitrium. Judicium est pecuniae certae: arbitrium incertae. Ad judicium hoc modo venimus ut totam litem aut obtineamus aut amittamus: ad arbitrium hoc animo adimus ut neque nihil neque tantum quantum postulavimus consequamur. Ejus rei ipsa verba formulae testimonio sunt. Quid est in judicio?

Doubtless it was established by the Lex Silia in place of the old Legis Actio in the case of an action for a sum of money, and was transferred from this Legis Actio to the more recent Condictio.

"The meaning of this Sponsio was this: the plaintiff could compel the defendant, in the case of judgment being against him, to pay in addition to the principal sum the third part of the same sum as a penalty. The plaintiff must also submit to promise a like sum in case that the judgment was against him (Gaius iv. § 13, 180).

"This peculiarity of the Condictio for a sum of money was practically of more importance than one would suppose at first sight; indeed it was without doubt the most important circumstance, which at a later time maintained a marked distinction between the Condictiones and other suits. Let us imagine what an effect, even in our system of law, would be given to a form of action, if a penalty of 33⅓ per cent. of the matter in dispute were made a part of it" (Savigny, System, &c., v. p. 610). I don't know how the Romans managed about costs, which are so important a matter in our system, and especially in chancery suits. But this contrivance would help. The third part which the plaintiff or defendant would have to pay might be taken as costs.

Judicium—arbitrium] Something more is necessary for the correct understanding of these terms, besides what is said in the Introduction.

The Judicia and Arbitria which are here defined by Cicero are again mentioned (c. 5) with a rhetorical flourish, as 'judicia legitima,' and 'arbitria honoraria.' The 'judicia legitima' then are the 'actiones civiles,' and the 'arbitria honoraria' are the 'actiones praetoriae.' But the word 'judicia' is also generic, and is used to comprehend both 'judicia' in the specific sense, and 'arbitria,' as will appear from the following passages of Cicero (Top. 17; De Off. iii. 15, 17). For he speaks of 'judicia' in which there are added to the Formula the words 'ex fide bona;' and he calls them both 'judicia' and 'arbitria.' A passage of Seneca (De Benef. iii. 7) gives us some explanation of these expressions, which Cicero has omitted: "Ideo melior videtur conditio caussae bonae si ad judicem quam si ad arbitrum mittatur: quia illum formula includit, et certos quos non excedat terminos ponit; hujus libera et nullis adstricta vinculis religio et detrahere aliquid potest et adjicere . . . ubi id de quo sola sapientia decernit in controversiam incidit, non potest ad haec sumi judex ex turba selectorum quem census in album et equestris hereditas misit." The 'judices selecti' were those whose names from time to time appeared in the 'album,' which contained the list of men out of whom judices must be taken when the action was a Judicium. If it was an Arbitrium, the arbiter might be any person, whether his name was in the 'album' or not. Something further is said in the speech Pro Cluentio, c. 43. It was observed that the word 'judicium' had both a generic and a specific sense; and so had 'judex,' as we see in Gaius (iv. § 163), who uses 'judex' and 'arbiter' indifferently, for an arbiter was a judex. But 'arbitrium' and 'arbiter' have the limited meaning, and when they are used, the kind of action is meant in which a judex has a wider range (Savigny, System, &c., v. § 218).

formulae] The word 'oportere' was added by Hotmann, and it is necessary, unless we suppose that Cicero did not proceed so far in citing the formula. The formula applicable to this case is in Gaius (iv. § 41, 43): "si paret Numerium Negidium Aulo Agerio sestertium x millia dare oportere . . . . Judex Numerium Negidium, Aulo Agerio sestertium x millia condemna: si non paret, absolve." The first part, 'si paret, &c.,' is the Intentio, or the part in which the claim of the plaintiff (actor) is expressed. The second is the Condemnatio. The Intentio was in some cases preceded by a Demonstratio, that is, by certain words intended to show what was the origin of the demand, as, "Quod Aulus Agerius Numerio Negidio hominem vendidit." But this Demonstratio could not have been used, as Savigny observes, in this case of Roscius; for if it had been, Cicero could not have made it a question whether a loan, a 'stipulatio,' or an 'expensilatio,' was the foundation of the action.

directum, asperum, simplex: SI PARET H-S ꟾↃↃↃ DARI [OPORTERE]. Hic nisi planum facit H-S ꟾↃↃↃ ad libellam sibi deberi, caussam perdit. Quid est in arbitrio? Mite, moderatum: QUANTUM AEQUIUS MELIUS ID DARI. Ille tamen confitetur plus se petere quam debeatur: sed satis superque habere dicit quod sibi ab arbitro tribuatur. Itaque alter caussae confidit, alter diffidit. Quae quum ita sint, quaero abs te quid ita de hac pecunia, de his ipsis H-S ꟾↃↃↃ, de tuarum tabularum fide compromissum feceris, arbitrum sumpseris, quantum aequius [et] melius sit dari repromittive, si pareret? Quis in hanc rem fuit arbiter? Utinam is quidem Romae esset! Romae est. Utinam adesset in judicio! Adest. Utinam sederet in consilio C. Pisonis! Ipse C. Piso est. Eumdemne tu arbitrum et judicem sumebas? eidem et infinitam largitionem remittebas, et eumdem in angustissimam formulam sponsionis concludebas? Quis umquam ad arbitrum quantum petiit tantum abstulit? Nemo. Quantum enim aequius esset sibi dari petiit. De quo nomine ad arbitrum adisti, de eo ad judicem venisti. Ceteri quum ad judicem caussam labefactari animadvertunt, ad arbitrum confugiunt: hic ab arbitro ad judicem venire est ausus.

The Intentio, which in the strict action had the form "Quidquid Negidium dare facere oportet," became in the freer form of action "Quidquid Negidium dare facere oportet ex fide bona," whence these actions had the name of 'bonae fidei actiones.' In some cases the words 'ut inter bonos bene agier oportet' were put in the place of 'ex fide bona;' and in other cases, 'aequius melius.' But the expression 'aequius melius' had a larger signification than 'ex fide bona,' and gave the judex a still wider range. It occurs even in some of the 'praetoriae actiones,' in the formulae of which 'ex fide bona' never occurred, because the words 'ex fide bona,' which characterized the 'bonae fidei actiones,' were understood as a matter of course in the 'praetoriae actiones;' and the addition 'aequius melius' gave the judex a still greater competence (Savigny, System, &c., v. p. 490).

The Romans showed their good sense in this formula 'ex fide bona;' for there are many cases in which the exact amount of a demand for money can only be fixed by considering the circumstances of the case. The old Roman law was strict and most formal. If the formula was 'Si paret centum dare oportere,' the judex could only give judgment for 'centum,' or nothing, which Cicero expresses thus: "Hic nisi planum facit H-S ꟾↃↃↃ ad libellam (exactly, 'to a farthing,' as we say) sibi deberi, caussam perdit." In the formula, 'si paret fundum dare oportere,' he could either order the estate to be given, or its value in money. In the formula, "Quidquid dare facere oportet," the judex had a still greater power as to determining the amount of money to be paid. Cases of this last kind clearly came very near to the 'bonae fidei actiones;' they formed the transition from the 'actiones stricti juris' to the 'bonae fidei actiones,' and were only distinguished from them by the omission of the words 'ex fide bona' (Savigny, System, &c. v. p. 492).

ID DARI.] 'et melius sit dari:' Orelli.—'compromissum:' Vol. I. Verr. ii. 2. c. 27.

aequius [*et*], &c.] The conjunction was not generally used in such forms.—'eidem et infinitam,' &c.: this is the arbiter; 'et eumdem in angustissimam,' &c.: this is the judex. It is perhaps hardly necessary to say that the arbiter could not do as he liked. His power of deciding according to the equity of the case was a power that he must exercise honestly.

ad arbitrum] So he says "ad judicem caussam labefactari." When Cicero concludes that Chaerea, by bringing the matter before an arbiter, admitted that money was not due to him, he means an ascertained sum of money; for the demand before the

Qui quum de hac pecunia, de tabularum fide arbitrum sumpsit, judicavit sibi pecuniam non deberi.

Jam duae partes caussae sunt confectae: adnumerasse sese negat; expensum tulisse non dicit quum tabulas non recitat. Reliquum est ut stipulatum se esse dicat. Praeterea enim quemadmodum certam pecuniam petere possit non reperio. V. Stipulatus es. Ubi, quo die, quo tempore, quo praesente, quis spopondisse me dicit? Nemo. Hic ego si finem faciam dicendi, satis fidei et diligentiae meae, satis caussae et controversiae, satis formulae et sponsioni, satis etiam judici fecisse videar, cur secundum Roscium judicari debeat. Pecunia petita est certa: cum tertia parte sponsio facta est. Haec pecunia necesse est aut data, aut expensa lata, aut stipulata sit. Datam non esse Fannius confitetur: expensam latam non esse codices Fannii confirmant: stipulatam non esse taciturnitas testium concedit. Quid ergo est? Quod et reus is est qui et pecunia levissima et existimatio sanctissima fuit semper; et judex est is quem nos non minus bene de nobis existimare quam secundum nos judicare velimus; et advocatio ea est quam propter eximium splendorem ut judicem unum vereri debeamus; proinde ac si in hanc formulam omnia judicia legitima, omnia arbitria honoraria, omnia officia domestica conclusa et comprehensa sint, proinde dicemus. Illa superior fuit oratio necessaria, haec erit voluntaria: illa ad judicem, haec ad C. Pisonem: illa pro reo, haec pro Roscio, illa victoriae, haec bonae existimationis caussa comparata.

VI. Pecuniam petis, Fanni, a Roscio. Quam? Dic audacter et aperte. Utrum quae tibi ex societate debeatur, an quae ex

arbiter was a demand for something which had a money value.

5. *Stipulatus es.*] I have erased the note of interrogation after the 'stipulatus es.'

reus is est] The MSS. reading appears to be 'res ejus est;' but the emendation is certain. It is said to appear in the old edition of R. Étienne. Klotz has in his edition 'quod et res ejus est cui res et pecunia;' and after showing that Cicero in his fashion is playing on the double meaning of the word 'res,' he adds: "it is scarcely necessary here to make the further remark that all the MSS. defend our reading." I can only find that the MSS. have 'quod et res ejus est,' and the second 'res' I assume to be an interpolation by Klotz. He does not give any authority for it. If 'quod et reus is est' is the true reading, we must show how it came to be corrupted. 'Res' being three letters of common occurrence, was often represented by a single *r*, both in the word 'res,' and in other words of which it forms a part. The supposed original text, 'reusis est,' and 'r eius est,' are not much unlike. The *r* in the second case would stand for 'res.' It seems that 'reus,' 'judex,' 'advocatio,' are contrasted; and he refers to the 'reus' again when he says a little further on 'illa pro reo.'

advocatio] This is a collective term, which means the 'advocati,' the friends who attended the court to give their countenance to the parties, or, as others suppose, the assistants of the judex, as in Pro Quintio, c. 2. Garatoni suspects that 'judicem unum' should be 'judicem ipsum.' I see no ground for the suspicion. 'Unum' is emphatic.

liberalitate hujus promissa sit et ostentata? Quorum alterum est gravius et odiosius; alterum levius et facilius. Quae ex societate debeatur? Quid ais? Hoc jam neque leviter ferendum est, neque negligenter defendendum. Si qua enim sunt privata judicia summae existimationis et paene dicam capitis, tria haec sunt, fiduciae, tutelae, societatis. Aeque enim perfidiosum et nefarium est fidem frangere quae continet vitam, et pupillum fraudare qui in tutelam pervenit, et socium fallere qui se in negotio conjunxit. Quae quum ita sint, qui sit qui socium fraudarit et fefellerit consideremus. Dabit enim nobis jam tacite vita acta in alterutram partem firmum et grave testimonium. Q. Roscius? Quid ais? Nonne, ut ignis in aquam conjectus continuo restinguitur et refrigeratur, sic refervens falsum crimen in purissimam et castissimam vitam collatum statim concidit et exstinguitur? Roscius socium fraudavit? Potest hoc homini huic haerere peccatum, qui medius fidius, audacter dico, plus fidei quam artis, plus veritatis quam disciplinae possidet in se; quem populus Romanus meliorem virum quam histrionem esse arbitratur; qui ita dignissimus est scena propter artificium ut dignissimus sit curia propter abstinentiam. Sed quid ego ineptus de Roscio apud Pisonem dico? Ignotum hominem scilicet pluribus verbis commendo. Estne quisquam omnium mortalium de quo melius existimes tu? Estne quisquam qui tibi purior, pudentior, humanior, officiosior, liberaliorque videatur? Quid, tu, Saturi, qui contra hunc venis, existimas aliter? Nonne, quotiescumque in caussa in nomen hujus incidisti, toties hunc et virum bonum esse dixisti et honoris caussa appellasti? quod nemo nisi aut honestissimo aut amicissimo facere consuevit. Qua in re mihi ridicule es visus esse inconstans qui eumdem et laederes et laudares, et virum

6. *existimationis*, &c.] See Pro Quintio, c. 10, note. The 'actio tutelae' was the action of the 'pupillus' against his 'tutor,' the consequence of which was 'infamia' if judgment was against the 'tutor.' The 'tutor' also became 'infamis' if he was removed from his office as 'suspectus.'

'Fiducia' is the confidence which one man puts in another, as when he puts something into his hands for safe keeping: "sed cum fiducia contrahitur aut cum creditore pignoris jure, aut cum amico quod tutius nostrae res apud eum essent," &c. (Gaius ii. 60.) Cicero says (Top. 10): "Si tutor fidem praestare debet, si socius, si cui mandaris, si qui fiduciam acceperit," &c. Comp. Pro Q. Rosc. Am. c. 38, 39. There was an 'actio fiduciae' (Cic. De Off. iii. 15, 17; Ad Fam. vii. 12; Gaius iv. 62). It might be either a 'condictio' or a 'bonae fidei actio.'

refervens] This means 'boiling hot,' or 'boiling over.' It also means 'cooling down;' and so it may consistently with the use of *re* in compounds.

abstinentiam.] The great histrionic talent (artificium) of Roscius made him the first of actors; and his pure life (abstinentia) made him worthy of the senate. 'Artificium' is skill in an art (Vol. I. Verr. ii. 4. c. 21). 'Abstinentia' seems to be properly the absence of greediness of gain; and 'continentia' is our 'continence' (Cic. De Off. ii. 22). The reader may exercise himself in translating 'ita dignissimus . . . ut,' &c.

optimum et hominem improbissimum esse diceres. Eumdem tu et honoris caussa appellabas et virum primarium esse dicebas, et socium fraudasse arguebas. Sed, ut opinor, laudem veritati tribuebas, crimen gratiae concedebas: de hoc ut existimabas praedicabas; Chaereae arbitratu caussam agebas.

VII. Fraudavit Roscius. Est hoc quidem auribus animisque hominum absurdum. Quid si tandem aliquem divitem timidum, dementem, inertem nactus esset qui experiri non posset? tamen incredibile esset. Verumtamen quem fraudarit videamus. C. Fannium Chaeream Roscius fraudavit. Oro atque obsecro vos qui nostis, vitam inter se utriusque conferte; qui non nostis, faciem utriusque considerate. Nonne ipsum caput et supercilia illa penitus abrasa olere malitiam et clamitare calliditatem videntur? Nonne ab imis unguibus usque ad verticem summum, si quam conjecturam affert hominibus tacita corporis figura, ex fraude, fallaciis, mendaciis constare totus videtur, qui idcirco capite et superciliis semper est rasis, ne ullum pilum viri boni habere dicatur? Cujus personam praeclare Roscius in scena tractare consuevit; neque tamen pro beneficio ei par gratia refertur. Nam Ballionem illum improbissimum et perjurissimum lenonem quum agit, agit Chaeream.

7. *qui experiri non posset?*] In c. 9 there is 'judicio experiri.' It is often used absolutely. Horace says (Epp. i. 17. 41):—

"Aut virtus nomen inane est,
Aut decus et pretium recte petit experiens
vir."

Cicero has the same expression as Horace. In the oration Pro P. Quintio there is 'experiri intra parietes' (c. 11). Here it means a man who could not defend himself in an action.

caput et supercilia] Hotmann is learned here. He says that some people shaved their heads and eyebrows on account of the heat. Julius Caesar was careful about shaving or scraping himself; he was even reproached with 'vellicatio.' His head would not cost him much trouble, for he was bald. This great commander was not a hirsute hero. Horace (Epp. i. 7. v. 50) describes Vulteius as close shaved, "Adrasum quendam vacua tonsoris in umbra." The full meaning of Cicero's abuse is made out by an extract from a speech of P. Scipio Africanus Pauli F., against P. Sulpicius Gallus (Gellius vii. 12). None but a Roman in his own language could vent such abuse. "Nam qui cotidie unguentatus adversum speculum ornetur, cujus supercilia radantur, qui barba vulsa feminibusque vulsis ambulet, qui in conviviis adolescentulus cum amatore, cum chiridota tunica interior (inferior) accubuerit, qui non modo vinosus, sed virosus quoque sit, eumne quisquam dubitet quin idem fecerit quod cinaedi facere solent?"

There was a contest at Rome between the hirsute and the shaved. Each got the upper hand in turns. Antiquity was doubtless hirsute; and the unshorn appear at intervals in the busts of the imperial period.

Ballionem] He is a 'leno' in the Pseudolus of Plautus, and well drawn. The 'leno' made a great figure in Roman comedy. The Greeks seem to have produced the man. His was just the business that suited a Greek. He used to travel about sometimes with a caravan of women from place to place, to attend fairs and the like. He also kept the women in houses, and procured them for his customers. The character exists now, but modern manners would resist his appearance on the stage. The coarseness of Cicero's abuse is intolerable. Because Chaerea sued Roscius, he is compared with such a notorious scoundrel as Ballio.

Persona illa lutulenta, impura, invisa, in hujus moribus, natura vitaque est expressa. Qui quamobrem Roscium similem sui in fraude et malitia existimarit, nihil videtur, nisi forte quod praeclare hunc imitari se in persona lenonis animadvertit. Quamobrem etiam atque etiam considera, C. Piso, quis quem fraudasse dicatur. Roscius Fannium? Quid est hoc? Probus improbum, pudens impudentem, perjurum castus, callidum imperitus, liberalis avidum. Incredibile est. Quemadmodum, si Fannius Roscium fraudasse diceretur, utrumque ex utriusque persona veri simile videretur, et Fannium per malitiam fecisse et Roscium per imprudentiam deceptum esse, sic, quum Roscius Fannium fraudasse arguatur, utrumque incredibile est, et Roscium quidquam per avaritiam appetisse et Fannium quidquam per se bonitate amisisse.

VIII. Principia sunt hujusmodi. Spectemus reliqua. H-S IↃↃↃ Q. Roscius fraudavit Fannium. Qua de caussa? Subridet Saturius, veterator, ut sibi videtur. Ait propter ipsa H-S IↃↃↃ. Video; sed tamen cur ipsa H-S IↃↃↃ tam vehementer concupierit quaero. Nam tibi, M. Perperna, C. Piso, certe tanti non fuissent ut socium fraudaretis. Roscio cur tanti fuerint caussam requiro. Egebat. Immo locuples erat. Debebat. Immo, in suis nummis versabatur. Avarus erat. Immo, etiam antequam locuples semper liberalissimus munificentissimusque fuit. Pro deum hominumque fidem! qui H-S CCCIↃↃↃ CCCIↃↃↃ CCCIↃↃↃ quaestus facere noluit, nam certe H-S CCCIↃↃↃ CCCIↃↃↃ CCCIↃↃↃ merere et potuit et debuit, si potest Dionysia H-S CCCIↃↃↃ CCCIↃↃↃ merere, is per summam fraudem et malitiam et perfidiam H-S IↃↃↃ appetiit? Et illa fuit pecunia immanis, haec parvula: illa honesta, haec sordida: illa jucunda, haec acerba: illa propria, haec in caussa et in judicio collocata. Decem his annis proximis H-S sexagies honestissime consequi potuit: noluit. Laborem quaestus recepit: quaestum laboris rejecit. Populo Romano adhuc servire non destitit: sibi servire jampridem destitit. Hoc tu unquam, Fanni, faceres? et si hos

nihil videtur,] The critics won't let this rest; but it is right. He says 'there is no reason for thinking Roscius like himself,' &c.—'per se bonitate:' Hotmann says it should be 'per suam bonitatem;' but he did not understand it. Orelli omits 'se.'

8. *tanti non fuissent — tanti fuerint*] Klotz has 'tanti non fuisset—tanti fuerit.' Either is right.

Egebat.] I have struck out the notes of interrogation after 'egebat,' 'debebat,' and 'avarus erat.'

in suis nummis] See Vol. I. Verr. ii. 4. c. 6.

noluit.] It seems that Roscius had often played for nothing. Dionysia was a dancing woman, who was well paid. L. Torquatus, a coarse man, thought that he made a good hit in comparing the elegant gesture of Hortensius with that of Dionysia, and he got from the orator an answer for his pains (Gellius i. 5).

quaestus recipere posses, non eodem tempore et gestum et animam ageres? Dic nunc te ab Roscio H-S ıↃↃↃ circumscriptum esse, qui tantas et tam infinitas pecunias non propter inertiam laboris, sed propter magnificentiam liberalitatis repudiarit. Quid ego nunc illa dicam quae vobis in mentem venire certo scio? Fraudabat te in societate Roscius. Sunt jura, sunt formulae de omnibus rebus constitutae, ne quis aut in genere injuriae aut ratione actionis errare possit. Expressae sunt enim ex unius cujusque damno, dolore, incommodo, calamitate, injuria, publicae a praetore formulae ad quas privata lis accommodatur.

IX. Quae quum ita sint, cur non arbitrum pro socio adegeris Q. Roscium quaero. Formulam non noras. Notissima erat. Judicio gravi experiri nolebas. Quid ita? Propter familiaritatem veterem. Cur ergo laedis? Propter integritatem hominis. Cur igitur insimulas? Propter aegritudinem criminis. Itane vero,

gestum et animam] 'Gestum agere' means 'to use gesture,' 'animam agere' is 'to die,' to breathe out life with difficulty. Martial (i. 80) has an epigram on it. 'Animam agere' is well said of those who die with pain when the action of the diaphragm is violent.

H-S ıↃↃↃ *circumscriptum*] 'Cheated out of.' It may be doubted in what case the money is expressed. I take it to be the accusative. Juvenal (Sat. xiv. 237) has the word 'circumscribere:'—

"Quot Basilus socios, quot circumscripserit Hillus
Pupillos."

accommodatur.] Hotmann says that 'accommodetur' is the reading of two old MSS. The tense should be subjunctive.

In the early period of Roman history there were only the 'Legis actiones;' and after they were abolished, with few exceptions the formulae were the foundation of every suit, and they continued in use so long as the 'ordo judiciorum privatorum' existed, up to the time of Constantine or thereabouts. There were 'formulae' in the time of the 'Legis actiones' (Gaius ii. § 24; iv. § 16, 21, 24). "The distinction was this: in the early time symbolical acts were combined with formal words; in later periods such words alone were used, and in a new form, better suited to the times. These new forms of words had now exclusively the name 'Formulae,' because there was no more special name for them. This term contains also the notion of a form of words (verba concepta) in writing, which was addressed to the judex, by virtue of which the term 'formulae' appears in still stronger contrast with the old formularies used in the 'Legis actiones'" (Savigny, System, &c. v. 7). If a man could find a formula to suit his case, he could bring his action. If he could not find any formula which would comprehend his case, he had no action. But the Romans were ingenious in legal matters, and ultimately they had an action for every man, if he had any thing like a case.

9. *arbitrum pro socio*] It is said that some MSS. have 'ad arbitrum.' I don't know if there is a MSS. reading 'arbitrium,' which reading some critics prefer. The expression 'arbitrum adigere' occurs elsewhere in Cicero, if the texts are right (Top. 10; De Off. iii. 16). 'Ferre judicem' is to propose a judex. 'Arbitrum,' or 'ad arbitrum adigere' seems to mean to press or urge a man to consent to an arbiter (pro socio), in an 'arbitrium' founded on a partnership. There is a long note by A. Manutius, on the passage in Cicero De Off. iii. 16.

aegritudinem criminis.] Turnebus changed 'aegritudinem' into 'magnitudinem,' and the editors follow him, except Klotz. Menard explains 'aegritudinem' thus: "ex qua re reo aegre est, propter periculum infamiae quam subeat condemnatus.' If 'aegritudo criminis' is Latin, Menard may have hit the meaning. We know that 'magnitudinem criminis' is Latin; but there is no evidence that Cicero wrote it here. I do not think that 'magnitudinem' is the proper word.

quem per arbitrum circumvenire non posses, cujus de ea re proprium erat judicium, hunc per judicem condemnabis, cujus de ea re nullum est arbitrium? Quin tu hoc crimen aut objice, ubi licet agere; aut jacere noli, ubi non oportet. Tametsi jam hoc tuo testimonio crimen sublatum est. Nam quo tu tempore illa formula uti noluisti, nihil hunc in societatem fraudis fecisse ostendisti.— Fecit pactionem. — Num tabulas habet an non? Si non habet, quemadmodum pactio est? Si habet, cur non nominas? Dic nunc Roscium abs te petisse ut familiarem suum sumeres arbitrum. Non petiit. Dic pactionem fecisse ut absolveretur. Non pepigit. Quaere quare sit absolutus? Quod erat summa innocentia et integritate. Quid enim factum est? Venisti domum ultro Roscii; satisfecisti: quod temere commisisses in judicium ut denuntiaret, rogasti ut ignosceret; te affuturum negasti: debere tibi ex societate nihil clamitasti. Judici hic denuntiavit: absolutus est. Tamen fraudis ac furti mentionem facere audes? Perstat in impudentia. Pactionem enim, inquit, mecum fecerat. Idcirco videlicet ne condemnaretur. Quid erat caussae cur metueret ne condemnaretur?—Res erat manifesta: furtum erat apertum.—Cujus rei furtum factum erat? Exorditur magna cum exspectatione veteris histrionis exponere societatem.

cujus de ea re proprium erat] It is said that all the MSS. have 'cujus de ea re proprium non erat.' Turnebus omitted the 'non;' and if I understand Menard correctly, he also omitted the 'non.' Klotz retains it, and explains it, very foolishly as I think, with the impertinent remark that it is only owing to ignorance of the legal matter that the critics have expunged the 'non.' This is a very arrogant remark from a man whose knowledge of legal matters is very inexact.

ubi licet agere;] Before the arbiter.—'in societatem:' many MSS. have 'in societate.' —'Fecit pactionem:' Chaerea is supposed to affirm that Roscius came to terms with Fannius, and settled the matter which was before the arbiter. What follows is obscure; but if we take the text as it stands, it ought to be Cicero's question, who asks if Fannius has evidence of this 'pactio' in his books. Again, there is a risk of misunderstanding what follows. Chaerea is not to be supposed to say 'Non petiit,' 'non pepigit.' Cicero considerately says it for him. Further, he says that Chaerea went to Roscius's house, (ultro) instead of Roscius coming to him.—'satisfecisti:' 'you excused yourself.'

quod temere—ignosceret;] There is something wrong here. An attempt has been made to remove the difficulty by a different pointing: but that cannot be done. After 'commisisses' we want 'ut' with a subjunctive; and the 'rogasti ut ignosceret' seems to have for its object 'quod temere . . . denuntiaret.' If this be true, 'denuntiaret' must be 'denuntiares' or 'denuntiaretur.' Klotz has 'quod temere commisisti,' the reading of some MSS.; and he says that it stands sure. Orelli also has 'commisisti.'

Judici hic denuntiavit:] Roscius gave the judex, that is the arbiter, notice that all was settled.

Pactionem enim,] He persists in his impudence. 'Yes, says he, but he had made an arrangement with me. For this reason, I suppose (says Cicero), to prevent judgment being given against him.' The words 'idcirco, &c.' must not be assigned to Chaerea. 'Pactionem enim' is one of Cicero's ways of expression. Vol. I. Verr. ii. 1. c. 9. And Pro Q. Rosc. c. 16, "Dixit enim, inquit, juratus, &c."

veteris histrionis . . . societatem.] He means the partnership in this old histrio Panurgus; a histrio before he became a comoedus. See c. 10.

X. Panurgus, inquit, fuit Fannii: is fuit ei cum Roscio communis. Hic primum questus est non leviter Saturius, communem factum esse gratis cum Roscio qui pretio proprius fuisset Fannii. Largitus est scilicet homo liberalis et dissolutus et bonitate affluens Fannius Roscio? Sic puto. Quoniam ille hic constitit paullisper, mihi quoque necesse est paullum commorari. Panurgum tu, Saturi, proprium Fannii dicis fuisse. At ego totum Roscii fuisse contendo. Quid erat enim Fannii? Corpus. Quid Roscii? Disciplina. Facies non erat, ars erat pretiosa. Ex qua parte erat Fannii, non erat H-S ıɔɔɔ: ex qua parte erat Roscii, amplius erat H-S cccıɔɔɔ. Nemo enim illum ex trunco corporis spectabat, sed ex artificio comico aestimabat. Nam illa membra merere per se non amplius poterant duodecim aeris: disciplina, quae erat ab hoc tradita, locabat se non minus H-S cccıɔɔɔ. O societatem captiosam et indignam! ubi alter H-S ıɔɔɔ, alter cccıɔɔɔ quod sit in societatem affert: nisi idcirco moleste pateris, quod H-S ıɔɔɔ tu ex arca proferebas, H-S cccıɔɔɔ ex disciplina et artificio Roscius promebat. Quam enim rem et exspectationem, quod studium et quem favorem secum in scenam attulit Panurgus? Quod Roscii fuit discipulus. Qui diligebant hunc, illi favebant: qui admirabantur hunc, illum probabant: qui denique hujus nomen audierant, illum eruditum et perfectum existimabant. Sic est vulgus: ex veritate pauca, ex opinione multa aestimat. Quid sciret ille, perpauci animadvertebant. Ubi didicisset omnes quaerebant. Nihil ab hoc pravum et perversum produci posse arbitrabantur. Si veniret ab Statilio, tametsi artificio Roscium superaret, aspicere nemo posset. Nemo enim, sicut ex improbo patre probum filium nasci, sic ex pessimo histrione bonum comoedum fieri posse existimaret. Quia veniebat a Roscio, plus etiam scire quam sciebat videbatur. XI. Quod item nuper in Erote comoedo usu venit; qui posteaquam e scena non modo sibilis, sed etiam convicio explodebatur, sicut in aram confugit in hujus domum, disciplinam, patrocinium, nomen. Itaque perbrevi tempore, qui ne in novissimis quidem erat histrionibus, ad primos pervenit comoedos. Quae res extulit eum? Una commendatio hujus; qui tamen Panurgum illum, non solum ut Roscii

10. *duodecim aeris:*] This is the Roman short way of saying twelve pieces of money, twelve asses. Gellius (xx. 1) after quoting the Lex, "Si injuriam faxit alteri viginti quinque aeris poenae sunto," says, "quis erit tam inops quem ab injuria facienda viginti quinque asses deterreant?"

Quam enim rem] Boemoraeus (I don't know who he is) thought we should read 'quam enim spem,' and Graevius, from whom I get this information, thought so too; because 'spes' and 'expectatio' often come together. So may 'res' and 'expectatio.' Orelli has followed Boemoraeus.

discipulus fuisse diceretur, domum recepit, sed etiam summo cum labore, stomacho miseriaque erudiit. Nam quo quisque est sollertior et ingeniosior, hoc docet iracundius et laboriosius. Quod enim ipse celeriter arripuit, id quum tarde percipi videt discruciatur. Paullo longius oratio mea provecta est hac de caussa ut conditionem societatis diligenter cognósceretis. Quae deinde sunt consecuta? Panurgum, inquit, hunc, servum communem, Q. Flavius Tarquiniensis quidam interfecit. In hanc rem, inquit, me cognitorem dedisti. Lite contestata, judicio damni injuria constituto, tu sine me cum Flavio decidisti. Utrum pro dimidia parte an pro tota societate? Planius dicam, utrum pro me an et pro me et pro te? Pro me potui exemplo multorum; licitum est: jure fecerunt multi: nihil

11. *Nam quo quisque*] Roscius, says Crassus (De Or. i. 28), used to say that he never had a pupil whom he could approve of; not that some did not deserve approbation, but if there was any defect at all, he could not tolerate it. He must have been a hard master to please. It may be true that men of very quick perception are impatient teachers with a slow learner; but they are not good teachers.

cognitorem] See Vol. I. Divin. c. 4.

Lite contestata,] "The Litis Contestatio (of the period of the Ordo Judiciorum) is a proceeding of the parties before the praetor, in which by mutual declarations both parties bring the question into such form that it is ready for transmission to the judex. This proceeding is the last act 'in jure,' that is, of that part of the process which is before the praetor. It is contemporaneous with the formula which is given by the praetor, and implies that the judex has been named, since he is designated in the formula. As this proceeding before the praetor was intended to determine exactly the question in dispute (the issue), it could not be limited to a bare statement of facts: it must have comprised the 'exceptiones,' 'replicationes,' and 'duplicationes,' consequently the whole matter of the formula could be derived immediately from the proceeding (pleadings)." Savigny, System, &c., vi. p. 9.

The meaning of the term 'contestari' appears from Festus (s. v. Contestari). The proceeding took its name from the parties saying 'testes estote,' which words were of course addressed to some persons who were present. They were not necessarily the persons who were to give evidence in the judicium, as Savigny observes. The purpose of this 'contestatio' was probably to preserve oral testimony of what took place before the praetor, for we have no reason to suppose that there was a written record of it.

'Contestari' is a deponent verb; but the participle 'contestata' was used as a passive verb, of which there are examples in the Latin language; and it is not only in the excerpts in the Digest that this use of the word occurs, but it is here in Cicero; one of the many examples that the language of the classical jurists was not a debased Latin.

When Cicero says 'judicio—constituto,' this is only another way of expressing what 'Lite contestata' expresses. After the 'Litis contestatio' the matter was ready for the judèx. In the phrase 'damni injuria,' Ernesti supposed that 'injuria' was a gloss, one of the many blunders of this distinguished scholar. The Lex Aquilia (Dig. 9. tit. 2) contained the rules 'de damno injuria,' that is 'dato,' as Ulpian explains it. The first chapter of the Lex Aquilia was this: "Qui servum servamve alienum alienamve, quadrupedem vel pecudem injuria occiderit, quanti id in eo anno plurimi fuit, tantum aes dare domino damnas esto." The word 'injuria' was properly added, for in order to give the owner a right of action, it was necessary that the slave or animal must not be merely killed, but wrongfully killed. For instance, a man might kill a slave or beast in self-defence. Gaius (iii. § 210, &c.) explains this action, which he calls 'Damni injuriae actio.'

Pro me potui.] The books have it thus pointed: 'Pro me? Potui, &c.' Turnebus says that some MSS. have it thus: 'Pro me potui, exemplo multorum: licitum est, &c.;' and this is right, if the words from 'Utrum pro dimidia parte' are the supposed words of Roscius, as they seem to be considered, and as they perhaps are.

in ea re tibi injuriae feci: pete tu tuum, exige et aufer quod debetur: suam quisque partem juris possideat et persequatur. At enim tu tuum negotium gessisti bene. Gere et tu tuum bene. Magno tu tuam dimidiam partem decidisti. Magno et tu tuam partem decide. H-S cccıↄↄↄ tu abstulisti. Si fit hoc vero H-S cccıↄↄↄ tu quoque aufer. XII. Sed hanc decisionem Roscii oratione et opinione augere licet; re et veritate mediocrem et tenuem esse invenietis. Accepit enim agrum temporibus iis quum jacerent pretia praediorum: qui ager neque villam habuit neque ex ulla parte fuit cultus; qui nunc multo pluris est quam tunc fuit. Neque id est mirum. Tum enim propter rei publicae calamitates omnium possessiones erant incertae; nunc deum immortalium benignitate omnium fortunae sunt certae: tum erat ager incultus sine tecto; nunc est cultissimus cum optima villa. Verumtamen, quoniam natura tam malevolus es, numquam ista te molestia et cura liberabo. Praeclare suum negotium gessit Roscius; fundum fructuosissimum abstulit: quid ad te? tuam partem dimidiam quemadmodum vis decide. Vertit hic rationem, et id quod probare non potest fingere conatur. De tota re, inquit, decidisti.

Ergo huc universa caussa deducitur, utrum Roscius cum Flavio de sua parte an de tota societate fecerit pactionem. Nam ego Roscium, si quid communi nomine tetigit, confiteor praestare debere societati. Societatis, non suas lites redemit, quum fundum a Flavio accepit. Quid ita satis non dedit, AMPLIUS A SE NEMINEM PETITURUM? Qui de sua parte decidit, reliquis integram relinquit actionem; qui pro sociis transigit, satisdat neminem eorum postea petiturum. Quid ita Flavio sibi cavere non venit in mentem? Nesciebat videlicet Panurgum fuisse in societate. Sciebat. Nesciebat Fannium Roscio esse socium. Praeclare; nam iste cum eo

abstulisti.] 'You got.' This word does not necessarily express any irregular or illegal getting. Quite the contrary. See Pro Quintio, c. 5, note.

Si fit hoc vero] Orelli's edition omits the words 'si fit hoc.' Klotz keeps them, and in his preface (Vol. ii. p. 18) he says that these words represent the thing in a lively manner. They do no harm perhaps.

12. *cura liberabo.*] There is a reading 'liberabis:' but Hotmann has rightly explained 'liberabo.' Chaerea envied Roscius' good fortune in having got a valuable estate, and Cicero says that he will not ease him of his trouble and care on that head; and then he goes on to say that Roscius had made a good affair of it, which assertion would not be adapted to diminish Chaerea's supposed envy and ill-will to Roscius for his good luck.

satis non dedit,] 'satis dare,' 'to give enough, to satisfy, to give security.' The security was 'satisdatio' (Gaius iv. § 88). In the formula 'amplius a se' the words 'a se' are a little obscure. It has been proposed to omit 'a se,' and also to write 'ab eo,' in place of 'a se.' Orelli omits 'a se.' Hotmann supposes that these may be the words of the formula of 'satisdatio.' Cicero (Brutus, c. 5) in another passage, where he is joking, has the like form: "non solvam, nisi prius a te cavero, amplius eo nomine neminem cujus petitio sit petiturum."

litem contestatam habebat. Cur igitur decidit et non restipulatur neminem amplius petiturum? cur de fundo decidit et judicio non absolvitur? cur tam imperite facit ut nec Roscium stipulatione alliget neque a Fannio judicio se absolvat? Est hoc primum et ex conditione juris et ex consuetudine cautionis gravissimum et firmissimum argumentum; quod ego pluribus verbis amplecterer, si non alia certiora et clariora testimonia in caussa haberem. XIII. Et ne forte me hoc frustra pollicitum esse praedices, te, te, inquam, Fanni, ab tuis subselliis contra te testem suscitabo. Criminatio tua quae est? Roscium cum Flavio pro societate decidisse. Quo tempore? Abhinc annis xv. Defensio mea quae est? Roscium pro sua parte cum Flavio transegisse. Repromittis tu abhinc triennium Roscio. Quid, recita istam restipulationem clarius. Attende, quaeso, Piso. Fannium invitum et huc atque illuc tergiversantem testimonium contra se dicere cogo. Quid enim restipulatio clamat? QUOD A FLAVIO ABSTULERO, PARTEM DIMIDIAM INDE ROSCIO ME SOLUTURUM SPONDEO. Tua vox est, Fanni. Quid tu auferre potes a Flavio, si Flavius nihil debet? Quid hic porro nunc restipulatur quod jampridem ipse exegit? quid vero Flavius tibi daturus est, qui Roscio omne quod debuit dissolvit? Cur in re tam veteri, in negotio tam confecto, in societate dissoluta nova haec restipulatio interponitur? Quis est hujus restipulationis scriptor, testis, arbiter, quis? Tu, Piso. Tu enim Q. Roscium pro opera, pro labore, quod cognitor fuisset, quod vadimonia obisset, rogasti ut Fannio daret H-S CCCIↃↃↃ, hac conditione ut, si quid ille exegisset a Flavio, partem ejus dimidiam Roscio dissolveret. Satisne ista restipulatio dicere tibi videtur aperte Roscium pro se decidisse? At enim forsitan hoc tibi veniat in mentem, repromisisse Fannium Roscio, si quid a Flavio exegisset, ejus partem dimidiam, sed omnino exegisse nihil. Quid, tu non exitum exac-

13. *Abhinc annis* XV.] The first edition of Orelli has 'abhinc annis IV.' But he says the MSS. and the old editions have XV. The numeral is wrong, and Hotmann's emendation IV may be right.

Repromittis—restipulationem] See the Introduction. When he says 'recita istam restipulationem,' we see that the evidence of the 'stipulatio' was in writing, which was sometimes the case, as it has been already observed.

Fannio daret H-S CCCIↃↃↃ,] There seems to be an error in the numerals, which have been corrected in various ways.

Quid, tu &c.] In some editions a note of interrogation is placed at the end of this sentence, which spoils the sense. But the meaning is not clearly expressed. Cicero's argument is this, that we should look to the 'restipulatio' and 'repromissio,' which, as he says, prove that Roscius was supposed by Chaerea to have compounded with Flavius for his own share only; and he adds, that if Chaerea did not sue Flavius for his share, 'neither did he by that not declare his opinion that Roscius had compounded for his own share.' Klotz puts an (?) after 'Quid,' and another after 'debes;' which I don't understand. 'Quid' placed at the beginning of a sentence is not necessarily

tionis, sed initium repromissionis spectare debes: neque, si ille persequi noluit, non, quod in se fuit, judicavit Roscium suas non societatis lites redemisse. Quid, si tandem planum facio, post decisionem veterem Roscii, post repromissionem recentem hanc Fannii H-S cccɪↄↄↄ Fannium a Q. Flavio Panurgi nomine abstulisse; tamen diutius illudere viri optimi existimationi Q. Roscii audebit?

XIV. Paullo ante quaerebam, id quod vehementer ad rem pertinebat, qua de caussa Flavius, quum de tota lite faceret pactionem, neque satis acciperet a Roscio neque judicio absolveretur a Fannio. Nunc vero, id quod mirum et incredibile est, requiro quamobrem, quum de tota re decidisset cum Roscio, H-S cccɪↄↄↄ separatim Fannio dissolvit. Hoc loco, Saturi, quid pares respondere scire cupio; utrum omnino Fannium a Flavio H-S cccɪↄↄↄ non abstulisse, an alio nomine et alia de caussa abstulisse? Si alia de caussa; quae ratio tibi cum eo intercesserat? Nulla. Addictus erat tibi? Non. Frustra tempus contero. Omnino, inquit, H-S cccɪↄↄↄ a Flavio non abstulit, neque Panurgi nomine neque cujusquam. Si planum facio post hanc recentem stipulationem Roscii H-S cccɪↄↄↄ a Flavio te abstulisse, numquid caussae est quin ab judicio abeas turpissime victus? Quo teste igitur hoc planum faciam? Venerat, ut opinor, haec res in judicium. Certe. Quis erat petitor? Fannius. Quis reus? Flavius. Quis judex? Cluvius. Ex his unus mihi testis est producendus qui pecuniam datam dicat. Quis est ex his gravissimus? Sine controversia qui omnium judicio comprobatus est [judex]. Quem igitur ex his tribus a me testem spectabis? Petitorem? Fannius est: contra se numquam testimonium dicet. Reum? Flavius est. Is jampridem est mortuus. Si viveret, verba ejus audiretis. Judicem? Cluvius est. Quid is dicit? H-S cccɪↄↄↄ Panurgi nomen Flavium Fannio dissolvisse. Quem tu si ex censu spectas, eques Romanus est; si ex vita, homo clarissimus est; si ex te, judicem sumpsisti; si ex veri-

the introduction to an interrogative sentence; for we have in this chapter: 'Quid, recita istam restipulationem clarius.' And in this sentence Cicero makes an affirmation. He says 'Well, you ought to look not at the result of the demand on Flavius, but at the origin of the repromissio.'

14. *quum—faceret pactionem,*] That is, if it be true, as Chaerea says, that Flavius compounded with Roscius for the whole value of the slave, why did he neither get security from Roscius nor a release of the action from Fannius?

Addictus erat tibi?] The meaning of 'addictus' in the Roman execution needs no explanation here. Something is said of it in the oration Pro Flacco, c. 20.

[*judex.*]] This word seems to be an unnecessary addition.—'testem spectabis:' this can hardly be the right reading. Manutius proposes 'expectas' or 'expectabitis;' and Hotmann thinks that it should be 'expectabis,' which Klotz has in his text.

tate, id quod scire potuit et debuit dixit. Nega, nega nunc, equiti Romano, homini honesto, judici tuo credi oportere. Circumspicit, aestuat: negat nos Cluvii testimonium recitaturos. Recitabimus. Erras: inani et tenui spe te consolaris. Recita testimonium T. Manilii et C. Luscii Ocreae, duorum senatorum, hominum ornatissimorum, qui ex Cluvio audierunt. Utrum dicis Luscio et Manilio an et Cluvio non esse credendum? Planius atque apertius dicam. XV. Utrum Luscius et Manilius nihil de H-S ccc1ↃↃↃ ex Cluvio audierunt, an Cluvius falsum Luscio et Manilio dixit? Hoc ego loco soluto et quieto sum animo, et quorsum recidat responsum tuum non magno opere laboro. Firmissimis enim et sanctissimis testimoniis virorum optimorum caussa Roscii communita est. Si jam tibi deliberatum est, quibus abroges fidem jurisjurandi responde. Manilio et Luscio negas esse credendum? Dic, aude. Est tuae contumaciae, arrogantiae vitaeque universae vox. Quid, exspectas quam mox ego Luscium et Manilium dicam ordine esse senatores, aetate grandes natu, natura sanctos et religiosos, copiis rei familiaris locupletes et pecuniosos? Non faciam: nihil mihi detraham, quum illis exactae aetatis severissime fructum quem meruerunt retribuam. Magis mea adolescentia indiget illorum bona existimatione quam illorum severissima senectus desiderat meam laudem. Tibi vero, Piso, diu deliberandum et concoquendum est, utrum potius Chaereae injurato in sua lite, an Manilio et Luscio juratis in alieno judicio credas? Reliquum est ut Cluvium falsum dixisse Luscio et Manilio contendat: quod si facit, qua impudentia est, eumne testem improbabit quem judicem probarit? ei negabit credi oportere cui ipse crediderit? ejus testis ad judicem fidem infirmabit cujus propter fidem et religionem judicis testes comparabat? quem

ex Cluvio audierunt.] Cluvius was perhaps not dead, or Cicero might have said so; but he was out of the way. Cicero produces the evidence of two men who had heard him speak of this affair; not so good evidence as Cluvius' own testimony would have been. As Asconius observes in another place: 'apud veteres etiam de auditione testimonium dicebatur.' After 'audierunt' Hotmann added the following words: 'Testimonium T. Manilii et C. Luscii Ocreae,' because such a short notice occurs in all similar places.

15. *quibus abroges fidem*] Caesar (B. G. vi. 23) has the same expression with 'derogare:' 'omniumque iis rerum postea fides derogatur;' but some editions of Caesar have 'abrogatur.'

nihil mihi detraham,] Somewhat obscure, as it has been observed, or rather somewhat difficult to translate, as Latin often is. Cicero declines to dwell on the rank and character of these men, which would be arrogance and impertinence on his part, for they were old and well known, he was young and little known. 'Detrahere' signifies to take away from any thing, to impair its value. Accordingly Cicero says: 'I will not do it: I will not damage myself by assigning to them their well-earned merit of a life passed in the strictest integrity.' This is not very clear: but Cicero adds an explanation.—'comparabat:' 'compararit,' Halm.

ego si ferrem judicem refugere non deberet, quum testem producam, reprehendere audebit? XVI. Dixit enim, inquit, injuratus Luscio et Manilio. Si diceret juratus, crederes? At quid interest inter perjurum et mendacem? Qui mentiri solet, pejerare consuevit. Quem ego ut mentiatur inducere possum, ut pejeret exorare facile potero. Nam qui semel a veritate deflexit, hic non majore religione ad perjurium quam ad mendacium perduci consuevit. Quis enim deprecatione deorum, non conscientiae fide commovetur? Propterea quae poena ab diis immortalibus perjuro, haec eadem mendaci constituta est. Non enim ex pactione verborum quibus jusjurandum comprehenditur, sed ex perfidia et malitia, per quam insidiae tenduntur alicui, dii immortales hominibus irasci et succensere consuerunt. At ego hoc ex contrario contendo: levior esset auctoritas Cluvii, si diceret juratus, quam nunc est quum dicit injuratus. Tum enim forsitan improbis nimis cupidus videretur, qui qua de re judex fuisset testis esset? Nunc omnibus inimicis necesse est castissimus et constantissimus esse videatur, qui id quod scit familiaribus suis dicit. Dic nunc, si potes, si res, si caussa patitur, Cluvium esse mentitum. Mentitus est Cluvius. Ipsa mihi veritas manum injecit et paullisper consistere et commorari cogit. Unde hoc totum ductum et conflatum men-

ferrem judicem] See Pro Quintio, c. 9.

16. *deprecatione deorum,*] Some form of words by which the oath-taker calls on the deities to punish him, if he lies. This must be the meaning of the passage here. It is doubtful if 'ex pactione' is right. Ursini says that in an old codex there is 'peractione;' and 'peractione' with the common abbreviation might be mistaken for 'pactione.' A 'pactio' is any agreement of any kind; and some of the critics suppose that a formula of oath, such as 'si fallo, tum me Juppiter diique omnes perduint,' contains a conditio in it. This is true; but a 'conditio' is not a 'pactio.' There is another objection: 'pactio verborum' means an agreement about words, which is nonsense. If the form 'peractio verborum' does not occur, there is still no doubt that it is Latin.

These early orations of Cicero contain many 'loci communes,' for which we have no name except the translation 'common places.' This argument derived from 'loci communes' is after Greek fashion. When the common understanding of mankind is agreed on any thing, the orator knows that he can safely appeal to this general opinion. Cicero affirms that the man who is used to lie, gets used to perjury: the liar will take a false oath. But this is not always true. He who will take a false oath will of course lie, for perjury is lying and something more. But plain lying is less than perjury; and all we can say is that lying is a very good introduction to perjury. However, the orator having disposed of the objection, that Cluvius said what he did say without being on his oath, turns round dexterously, and argues very truly, that what an honest man tells his friends in conversation is better worth credit, than if he said the same thing on oath in a suit, after the matter of the conversation had become a question of fact between two interested parties, when he might be supposed to be a partizan (cupidus) of one of them.

manum injecit] 'Manus injectio' was a common Roman expression. In the old form of legal procedure, it was the seizing of the defendant by the plaintiff, when the defendant refused to appear 'in jure' or before the Praetor. The 'manus injectio' occurs in other cases, of which there are examples in Forcellini; as in Dig. 18. 7. 9. There is a well-known example in Livy iii. 44, in the case of Virginia.

dacium est? Roscius est videlicet homo callidus et versutus. Hoc initio cogitare coepit: quoniam Fannius a me petit H-S ɪɔɔɔ, petam a C. Cluvio, equite Romano, ornatissimo homine, ut mea caussa mentiatur; dicat decisionem factam esse, quae facta non est; H-S cccɪɔɔɔ a Flavio data esse Fannio, quae data non sunt. Est hoc principium improbi animi, miseri ingenii, nulli consilii. Quid deinde? Posteaquam se praeclare confirmavit, venit ad Cluvium. Quem hominem, levem? Immo gravissimum. Mobilem? Immo constantissimum. Familiarem? Immo alienissimum. Hunc posteaquam salutavit, rogare coepit blande et concinne scilicet: mentire mea caussa; viris optimis tuis familiaribus praesentibus dic Flavium cum Fannio de Panurgo decidisse, qui nihil transegit; dic H-S cccɪɔɔɔ dedisse, qui assem nullum dedit. Quid ille respondit? Ego vero cupide et libenter mentiar tua caussa, et, si quando me vis pejerare ut paullulum tu compendii facias, paratum fore scito; non fuit caussa cur tantum laborem caperes et ad me venires: per nuntium hoc quod erat tam leve transigere potuisti. XVII. Pro deum hominumque fidem! hoc aut Roscius umquam a Cluvio petisset, si H-S millies in judicium haberet? aut Cluvius Roscio petenti concessisset, si universae praedae particeps esset? Vix medius fidius tu, Fanni, a Ballione aut aliquo ejus simili hoc expostulare auderes et impetrare posses, quod quum est veritate falsum, tum ratione quoque est incredibile. Obliviscor enim Roscium et Cluvium viros esse primarios: improbos temporis caussa esse fingo. Falsum subornavit testem Roscius Cluvium. Cur tam sero? cur quum altera pensio solvenda esset, non tum quum prima?

nulli consilii.] "Sic Cdd. Edd. vett. Ven. Grut. Graev. 3. B:" Orelli. There is authority for this form of the genitive 'nulli.' It occurs in Terence, Andria iii. 5. 2:—

> "Atque hoc confiteor
> Jure mihi obtigisse, quando quidem tam
> iners, tam nulli consili
> Sum."

17. *in judicium haberet?*] 'If he had a millies at stake in the trial.' See Vol. I. Verr. ii. 2. c. 27. Pro Quintio, c. 5.

expostulare] 'et postulare:' Klotz.

temporis caussa] 'for the occasion.' In the long letter, Ad Quintum Fratrem (c. 5), 'tempus' is opposed to another thing: "si quem forte tui cognosti amantiorem, fieri enim potuit, quam temporis."

subornavit testem] We have taken this word and this use of it from the Latin. Indeed all the cultivated part of our language is Latin. The other part lies nearly fallow. But we have overlooked the primary meaning of 'subornare,' which is 'to equip,' 'fit out,' and so on; and we have taken only the secondary meaning of 'preparing or furnishing a witness,' which generally is the same thing as getting him ready to lie. Cicero says 'falsum testem,' I don't believe that our notion of 'suborning' is ever found in the Latin word alone: it comes from the context.

altera pensio] Manutius takes this to mean the payment made or to be made to Chaerea by Roscius (c. 13). Cicero supposes the case of Roscius inducing Cluvius to state a falsehood. About what? The amount of the money which Chaerea got from Flavius. 'Why is this done so late? Why when the second payment was to be made, and not when the first was to be made? For he had already paid H-S ɪɔɔɔ.' Cicero is speaking of a real payment, or he

Nam jam antea H-S ıↄↄↄ dissolverat. Deinde, si jam persuasum erat Cluvio ut mentiretur, cur potius H-S cccıↄↄↄ quam cccıↄↄↄ cccıↄↄↄ cccıↄↄↄ data dixit Fannio a Flavio, quum ex restipulatione pars ejus dimidia Roscii esset? Jam intelligis, C. Piso, sibi soli, societati nihil Roscium petisse. Hoc quum sentit Saturius esse apertum, resistere et repugnare contra veritatem non audet: aliud fraudis et insidiarum in eodem vestigio deverticulum repperit.

Petisse, inquit, suam partem Roscium a Flavio confiteor: vacuam et integram reliquisse Fannii concedo: sed quod sibi exegit, id commune societatis factum esse contendo. Quo nihil captiosius neque indignius potest dici. Quaero enim potueritne Roscius ex societate suam partem petere, necne? Si non potuit, quemadmodum abstulit? Si potuit, quemadmodum non sibi exegit? Nam quod sibi petitur, certe alteri non exigitur. An ita est? si quod universae societatis fuisset petisset, quod tum redactum esset aequaliter omnes partirentur, nunc quum petierit quod suae partis esset, non quod abstulit soli sibi exegit? XVIII. Quid interest inter eum qui per se litigat et qui cognitor

could not say 'nam jam antea H-S ıↄↄↄ dissolverat.' This cannot therefore be a payment from Flavius to Chaerea, as Menard supposes, for Cicero is supposing, for the sake of the argument, that nothing was paid by Flavius to Chaerea, and that Cluvius lied. As there is no nominative to 'dissolverat,' the nominative ought to be Roscius, of whom Cicero is speaking; and we must conclude that in this chapter Cicero affirms that Roscius had paid Chaerea one half of the sum mentioned in c. 13, whatever that sum was; and Cicero asks why Cluvius, if he was lying, did not speak of Chaerea having received the cccıↄↄↄ at the time when the first instalment was paid. To make all this consistent, we must suppose that the second instalment at least was not due until the trial between Flavius and Chaerea was over; and that Cluvius then told his friends that Chaerea had received such an amount. Roscius would then be entitled to one half of this amount, and he might set off what he had still to pay against what he had to receive. But if the alleged receipt of cccıↄↄↄ by Chaerea was an invention of Cluvius, Cicero asks why did he not say this when the first instalment was payable, and save Roscius the trouble of making it. This clearly implies that even the first instalment was not payable, or was not paid until after the time when Cluvius could have invented the falsehood; and therefore not until after he had given judgment against Flavius, or Chaerea had compounded with Flavius.

Manutius explained this passage right. The argument of Cicero may not be worth much; but it is certain what it is, though many of the commentators have missed his meaning. But that is very common.

in eodem vestigio] This is well explained by Passeratius: '*eodem in vestigio* est nihil mutato loco ubi constiterat.' It means accordingly 'on the spot.' See Caesar (B. G. iv. 5), 'quorum eos in vestigio poenitere necesse est.'—'deverticulum,' or 'diverticulum:' in many words of similar form it is doubtful whether the Romans used *de* or *di*; for instance, whether they said 'deminutio' or 'diminutio capitis.' In many compounds the difference between the preposition *de* and *di* or *dis* is plain; in others, as in this, it seems that either prefix may express the meaning.

Petisse,—confiteor:] It is necessary to attend well to this, in order to understand the argument. Cicero says, and we must take it to be true, for we know no more than he tells us, that Saturius admitted that Roscius sued only for his share. If he admitted that, he admitted all; and Cicero's argument is unanswerable. 'An ita est?' must be translated, 'is it not thus?'

18. The argument in this chapter is not easy to apprehend. "What is the difference between a man who conducts a suit himself,

PRO M. TULLIO

ORATIO.

INTRODUCTION.

This oration is only a fragment, and parts of the fragment are imperfect. But it is valuable for the knowledge which we derive from it of one of the Roman forms of action; and it gives us some information on the social condition of Italy in Cicero's time. These fragments were found by A. Mai in a palimpsest in the Ambrosian library at Milan, and by A. Peyron in a palimpsest of the Athenaeum library at Turin. ("M. Tullii Ciceronis Sex Orationum Fragmenta Inedita, &c. invenit recensuit notis illustravit Angelus Maius, Mediolani, 1814;" "M. Tullii Ciceronis Orationum pro Scauro, pro Tullio, &c. edidit et cum Ambrosianis parium orationum fragmentis composuit Amadeus Peyron, Stuttgard and Tübingen, 1824.")

Orelli printed this oration among the complete orations; for it is large enough to be read with pleasure and instruction. Beier in his edition supplied the defective parts of this fragment; and Orelli introduced these supplements into the text of Cicero, and printed them in Italics. I have omitted all this patchwork, and I have followed Keller's text (Semestrium Ad M. Tullium Ciceronem, Liber iii.). Baiter, who has edited this oration in the new edition of Orelli's Cicero (1854), has also omitted Beier's supplements. His edition is the latest; and he has made use of the labours of Peyron, Beier, Orelli (prior), Ed. Huschke, and of Keller's edition, of which something will be said.

The legal question which is the foundation of this speech of Cicero is stated by Savigny with his usual clearness and precision (Vermischte Schriften, Vol. iii.). Tullius was in possession of a piece of land, the ownership of which was in dispute; and the formal process of 'Deductio' had been agreed on as a preliminary to the 'Vindicatio,' or legal trial of the right of ownership (§ 20). But before the question was tried, the

opponent of Tullius sent upon the land a body of armed slaves, who killed some of the slaves of Tullius, wounded the rest, and did great damage to the buildings. Tullius brought his action for quadruple damages.

There is no doubt that we have in the edict (Vi Bonorum Raptorum et de Turba; Dig. 47. tit. 8) the form of action in which Tullius sued (47. 8. 2. Ulpianus ad Edictum): "Praetor ait: Si cui dolo malo hominibus coactis damni quid factum esse dicetur, sive cujus bona rapta esse dicentur, in eum qui id fecisse dicetur intra annum quo primum de ea re experiundi potestas fuerit in quadruplum, post annum in simplum judicium dabo. Item si servus fecisse dicetur, in dominum judicium noxale dabo."

The edict speaks of two different things—of damage done to property, and of robbery; and Cramer assumes that two different edicts, framed at different times and by different praetors, have been blended together in the writings of the jurists. But this is a mere hypothesis, and it is not founded on any fact. With respect to the terms of the edict, it might be doubted, as Savigny observes, whether the words 'hominibus coactis' refer only to 'damni quid factum,' or both to them and to the words 'bona rapta.' Perhaps the form of expression seems rather to limit the 'hominibus coactis' to 'damni quid factum,' though it is true that they may refer also to 'bona rapta.' But two other passages of Ulpian, in the same excerpt (Dig. 47. 8. 2. §§ 3, 12), clearly show that the words 'hominibus coactis' refer to both acts of violence; and the only reason for Cramer's hypothesis is thus removed. The edict forbids all damage which may be done by men who have been got together for that purpose, whether this damage consisted in the destruction of any thing (damnum), or in robbery. Cicero (§ 5) only speaks of 'damnum;' but Savigny observes, that this does not prove that the edict was different in Cicero's time from what it appears in the Digest. There was no robbery in the case of Tullius, but only damage done to his property, his slaves, and the buildings; consequently the Formula could only be applied to a case of 'damnum,' and Cicero could make no use of the other part of the edict.

The occasion of the edict arose, as Cicero tells us (§ 8, &c.), from the acts of violence to which people had been accustomed during the Civil Wars. Under the empire peace and order were restored, and consequently the edict was no longer of the same importance. To this circumstance we must attribute the difference between the original form of the edict, and the form in which it appears in the Digest. This is Savigny's original view of the matter. His essay was first printed in the "Zeitschrift für Geschicht. Rechtswissenschaft."

The most complete examination of this oration is by F. L. Keller

(Semestrium ad M. Tullium Ciceronem Libri Sex), who made use of the labours of Mai, Peyron, Beier, and Huschke. Keller's work is long; but the value of this fragment of Cicero is a sufficient apology for the length. What follows is from his work; and if it is well understood, the fragment may be read almost without the explanation of notes. Keller has also printed the Argumentum of Huschke, with whom he agrees except on a few matters, which he has discussed at some length. But any reader may learn as much of the facts of the case from the fragment as from any body's argument. I have not given an argument, because, as Keller says, as to the 'res quomodo gesta sit,' "non e *narrationis* fragmentis nisi adhibita conjectura ac divinandi quadam arte confici potest." And conjecture and divination are not worth much.

The formula in the action of Tullius was this (§ 7): "Quantae pecuniae paret dolo malo familiae P. Fabii vi hominibus armatis coactisve damnum datum esse M. Tullio." The formula in the 'Actio vi bonorum raptorum' has been already given. By examining the nature of this action as it appears in the more copious excerpts in the Digest, we shall have a better notion of its original character.

The 'Actio vi bonorum raptorum' was applicable to those cases of theft which were committed with violence, or by assembling men together, armed or unarmed: for theft was included in robbery (Gaius iii. 209). This action was also applicable to such acts of 'damnum' as were comprehended in the Lex Aquilia, if they were committed 'vi aut hominibus coactis.' But, under the empire, the action founded on the edict was applied to the case of 'bona rapta' much more frequently than to cases of 'damnum.' Besides the existence of acts committed 'aut vi aut hominibus coactis,' it was necessary that there should be 'dolus malus.' If a man did not commit the act of robbery or of 'damnum' himself, but got others together 'dolo malo,' who did it, he was liable to this action; or if he employed persons who were got together by others; or if he was one of those who were got together for this purpose.

The claim 'in quadruplum' was for the real value of the thing which was taken; but, in the case of damage done, it was, we may suppose, 'in quadruplum' of the amount of the damage. The 'in quadruplum' was not merely a penalty: it comprehended the value of the thing taken, or, as we may assume, of the damage done. It was, therefore, satisfaction to the value of the thing or the damage, and three times more (Inst. iv. Tit. 2). After the end of the year within which the action could be brought, the demand could only be 'in simplum,' for simple restitution or a simple equivalent (Gaius iii. 209). The 'heres' of the injured person had the right of action which his predecessor had; but there was no right of action against the 'heres' of the wrong doer.

If a slave did an act against the edict, the injured person had a 'noxalis actio,' the nature of which was that the master must either pay the 'quadruplum,' or, according to the Roman phrase, 'servum noxae dare' (Gaius iv. 76). The same was the rule in the case of a single slave and of a whole 'familia;' a term which comprehended even free persons who were engaged in the wrongful act. The consequence of judgment against a defendant in the 'Actio vi bonorum raptorum' was 'infamia.'

The action of M. Tullius was founded on the Edictum of the Praetor, M. Lucullus. The year of his praetorship was probably A.U.C. 678, or B.C. 76; and he had the 'jurisdictio inter cives et peregrinos.' This Edictum became Tralatitium (Vol. I. Excurs. iv.), and under the praetorship of L. Metellus it was the foundation of the action of Tullius. The name of L. Metellus occurs only once in this oration (§ 39). This Metellus appears to be the brother of Q. Metellus Creticus, and also one of the consuls of A.U.C. 686, or B.C. 68. We learn from the Verrine orations that he was Praetor of Sicily B.C. 70, and consequently he was Praetor at Rome in B.C. 71. We may also infer from the Verrine orations (ii. 3. c. 65), that he had the Urbana Jurisdictio at Rome: "(C. Gallus) postulavit a L. Metello ut ex edicto suo judicium daret in Apronium, Quod per vim aut metum abstulisset; quam formulam Octavianam et Romae Metellus habuerat et habebat in provincia." Keller has a long and ingenious discussion, in which he attempts to show that the original Edictum of Lucullus contained nothing about 'bona rapta.' It has been already observed that, so far as we know the Edictum from this oration, there is nothing in it about 'bona rapta;' and Savigny's explanation of this omission has been given. Keller has attempted to restore the formula according to which Tullius sued; and whether he has done it right or wrong, it is instructive, and will help the student to understand this oration, and the Roman forms of procedure. It is as follows: "Recuperatores sunto. Quantae pecuniae paret dolo malo familiae Numerii Negidii vi hominibus armatis coactisve damnum factum esse Aulo Agerio, duntaxat sestertium tot millium, tantae pecuniae quadruplum recuperatores Numerium Negidium Aulo Agerio condemnanto, si non paret, absolvunto."

The names Numerius Negidius and Aulus Agerius signify any body. They are used by Gaius in his Formulae.

Keller agrees with Cramer in supposing that, in the original Formula, the words 'vi hominibus armatis coactisve' were only applied to 'damnum,' and that nothing was said of 'bona rapta;' but he also agrees with Savigny in supposing, that there were never two separate Edicta, one about 'damnum vi hominibus coactisve datum,' and another about 'bona rapta.'

Keller supposes that the following changes took place in the original

Edictum, between the time of M. Lucullus, and the time when a settled form of Edictum was substituted for the annual Edicta.

1. The words 'Bonave rapta' were added.
2. The word 'Familiae' was omitted.
3. The word 'vi' was omitted.
4. The words 'armatisve' were omitted. The most striking part of the original edict is the word 'familiae,' by which the owner of slaves was punishable in a penalty for their acts, without having done any thing himself; and he had not the choice of the 'noxae deditio.' Under the empire, as Savigny remarks, and others also, the necessity for this strictness no longer existed. Internal tranquillity was secured, and the violence of private feuds was checked by a supreme authority. Nothing then was simpler than to limit the action to the 'dolus malus' of the master himself, and to apply the common principles of penal actions to the acts of a Familia or of single slaves.

But what was done in the time of M. Lucullus if a free man committed 'damnum vi hominibus armatis coactisve?' The answer is that sufficient provision was made for such cases by the Publica Judicia; and this being so, it was unnecessary for Lucullus to add any thing more to his Edictum. The Lex Plautia de vi appears to have been enacted B.C. 89, and accordingly was in force before the Edictum of M. Lucullus. Thus the Edictum of Lucullus is made intelligible, and the Publica Quaestio de vi was maintained, while a new remedy was provided for a present evil. In a Publicum judicium it is manifest that a man could only be answerable for his own 'dolus malus.' But if 'damnum' was done by his slaves, even at his instigation or by his contrivance, it would not always be easy to fix the charge on the master; and the best way of preventing such violence was to render him answerable for the acts whether he was privy to them or not. This was what the Edictum of Lucullus did.

Besides the Lex Plautia, there were at a later time the Juliae Leges De Vi, both the Lex of C. Julius Caesar and of Augustus. These Leges were enacted rather with a view to the public interest than for the advantage of him who had suffered 'damnum;' which was not the case with the old Leges. But it may be assumed, that it was considered just, at the same time, to allow an action against those who had done wrong in the terms of the edict as it appears in the Digest; to improve the old action given by the Edictum of Lucullus, by adapting it to the change of circumstances, and to remove all doubt and risk about the 'praejudicium,' which doubt had formerly existed. For it is certain that, by the Lex Julia 'de vi publica seu privata,' if a man was tried and condemned, the injured person was not for that reason prevented from bringing his action for damages: "Hoc edicto (Vi Bonorum

raptorum) contra ea quae vi committuntur consuluit Praetor; nam si quis se vim passum docere possit, publico judicio de vi potest experiri. Neque debere publico judicio privata actione praejudicari quidam putant; sed utilius visum est, quamvis praejudicium legi Juliae de vi privata fiat, nihilo minus tamen non esse denegandam actionem eligentibus privatam persecutionem." (Ulpian. ad Edict. Dig. 47. 8. 2. § 1.)

Keller after establishing, as he supposes, the original Formula founded on the Edictum of M. Lucullus, shows how the Edictum was subsequently modified, and reduced to the form in which it appears in the Digest by the successive alterations, four in number, which have been mentioned. He observes, that condemnation in an action founded on this Edictum could not be attended with Infamia before the 'furtum' was more considered in this matter than the 'damnum;' which observation is not precise, and indeed it means nothing. But he adds very truly, that the result of a 'condemnatio' in such an action could not be Infamia, so long as it was brought only for the wrongful act of a Familia; for Infamia could not attach to a man who was condemned in any action for the wrongful act of another.

The alterations made in the original edict were probably not made by any 'lex' or 'senatus consultum,' nor yet by the Praetors, but by the Jurists, who laboured at the interpretation of the Edictum, and so attempted to adapt the Formulae to the circumstances and wants of the times; for there are clear indications in the excerpts in the Digest that this action 'Vi Bonorum raptorum' still contained matter for dispute after the Edictum was reduced to the form in which it now appears in the Digest.

All that we know about the facts of this case must be collected from the text of Cicero. Keller, who has bestowed a wonderful amount of labour on this oration, cannot determine whether Tullius or Fabius had judgment in his favour, or which of them ought to have had. He has constructed the form of Cicero's speech as well he can from the fragments; and he has even attempted to give an outline of the oration that Quinctius made in defence of Fabius.

Keller examined the Ambrosian and Turin Palimpsests, and compared his readings with those of Mai and Peyron, and with the editions of Beier, Orelli, and Huschke. When he examined the Turin Palimpsest, the first leaf, which contains the beginning of the speech, could not be found; and it is supposed that it had been stolen.

M. TULLII CICERONIS

ORATIONIS PRO M. TULLIO

QUAE EXTANT.

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1. A * * * s * * * ratores * * * * turos adversarios arbitrarer, tantam caedem et tam atrocem ad familiam suam pertinere. Itaque animo soluto a cura et a cogitatione veneram, quod intelligebam facile id me testibus planum facere posse. Nunc vero, posteaquam non modo confessus est vir primarius L. Quinctius

* * * *

laborabam ut quod arguebam id factum esse ostenderem. Nunc in eo consumenda est oratio, ut ne adversarii, quod infitiari nullo modo potuerunt, quum maxime cuperent, id quum confessi sunt, meliore loco esse videantur.

2. Itaque tum vestrum difficilius judicium, mea facilis defensio fore videbatur. Ego enim omnia in testibus * * * quid est facilius quam de eo qui confitetur judicare? Mihi autem difficile est satis copiose de eo dicere, quod nec atrocius verbis

1. Peyron has supplied the beginning thus: "Antea sic hanc caussam adieram, Reciperatores, ut numquam dicturus." Keller had not the opportunity of examining the first folio of the Turin Palimpsest, as it has been already observed.

L. Quinctius] Here six lines are wanting in the MS. Peyron has supplied them, but Beier rejects his supplement, and Huschke rejects Beier's supplement. This L. Quinctius, it is conjectured, may be the man who is mentioned in the Brutus, c. 62, and in the Pro Cluentio, c. 29. 39, 40.

quum confessi] Keller writes 'cum,' probably the reading of the MS. The Romans wrote both 'quum' and 'cum.' See Vol. I. Verr. ii. 3. c. 31, note. The MSS. have 'comfessi.'

2. *difficilius*] The MS. has 'difficillius diudicium.' 'Diudicium' is probably a genuine old orthography, for 'diu' and 'iu' are interchangeable.

demonstrari potest quam re ipsa est, neque apertius oratione mea fieri quam ipsorum confessione factum est.

3. Quum in hac re quam commemoravi mihi mutanda ratio defensionis * * * *

minus diligenter illius existimationem quam rem M. Tullii viderer defendere. Nunc quoniam Quinctius ad caussam pertinere putavit, res ita multas, falsas praesertim et inique confictas, proferre de vita et moribus et existimatione M. Tullii, multis de caussis mihi Fabius debebit ignoscere, si minus ejus famae parcere videbor quam antea consului.

4. Priore * * * *

ore putavit ad officium suum pertinere adversario nulla in re parcere, quid me oportet Tullium pro Tullio facere, homine conjuncto mecum non minus animo quam nomine? Ac mihi magis illud laborandum videtur, Recuperatores, ut quod antea nihil in istum dixi probare possim, quam in eo reprehendar quod hoc tempore respondeo.

5. Verum et tum id feci quod oportuit, et nunc faciam quod necesse est. Nam quum esset de re pecuniaria controversia, quod damnum datum M. Tullio diceremus, alienum mea natura videbatur quidquam de existimatione Q. Fabii dicere, non quia res postulare non videretur. Quid ergo est? Tametsi postulat caussa, tamen, nisi plane cogit ingratiis, ad maledicendum non soleo descendere. Nunc, quum coactus dicam, si quid forte dicam, tamen id ipsum verecunde modiceque faciam, tantum ut, quoniam sibi me non esse inimicum potuit priore actione Fabius judicare, nunc M. Tullio fidelem certumque amicum esse cognoscat.

6. Unum hoc abs te, L. Quincti, pervelim impetrare,—quod tametsi eo volo, quia mihi utile est, tamen abs te idcirco quia aequum est postulo,—ut ita tibi multum temporis ad dicendum

3. *defensionis*] The sense of the seven lines which are lost seems to be as follows:—"tum erga P. Fabium paulo temperanda est nimia illa lenitas, qua antea famam illius tanto cum studio vel dissimulando vel excusando foveram, ut non &c." This is the supplement of Peyron, amended by Huschke: probable enough as to the sense, as Keller says; but as to the words, not worth much.

4. *Recuperatores,*] See Vol. I. Div. c. 17, note.

possim,] This is the conjecture of Cramer. The MS. has PROBAR * * * * * UMQUAINEO. There is no doubt about the emendation. The letters between R and U are uncertain in the Cod.

reprehendar] The Cod. has 'repraehendar.'

5. *quia*] The Cod. has 'quin.' Mai corrected it.—'si .. dicam:' om. Keller.

id ipsum] The Codex has 'idsum,' an abbreviation perhaps rather than a mistake. It is probable that the Romans in familiar speaking made this abbreviation.

modiceque] The Cod. has 'modique.' It is possible that this may be a genuine Latin form, though I know no authority for it.

6. *aequum*] The Cod. has 'aecum,' and I don't know why the editors have not

sumas, ut his aliquid ad judicandum relinquas. Namque antea non defensionis tuae modus, sed nox tibi finem dicendi fecit. Nunc si tibi placere potest, ne idem facias id abs te postulo. Neque hoc idcirco postulo, quod te aliquid censeam praeterire oportere, aut non quam ornatissime et copiosissime dicere, verum ut semel unaquaque de re dicas. Quod si facies, non vereor ne dicendo dies eximatur.

7. Judicium vestrum est, Recuperatores, QUANTAE PECUNIAE PARET DOLO MALO FAMILIAE P. FABI VI HOMINIBUS ARMATIS COACTISVE DAMNUM DATUM ESSE M. TULLIO. Ejus rei taxationem nos fecimus; judicium datum est in quadruplum.

8. Quum omnes leges omniaque judicia, quae paulo graviora atque asperiora videntur esse, ex improborum iniquitate et injuria nata sunt; tum hoc judicium paucis hisce annis propter hominum malam consuetudinem nimiamque licentiam constitutum est. Nam quum multae familiae dicerentur in agris longinquis et pascuis armatae esse caedesque facere, quumque ea consuetudo non solum ad res privatorum, sed ad summam rem publicam pertinere videretur, M. Lucullus, qui summa aequitate et sapientia jus dixit, primus hoc judicium composuit, et id spectavit, ut homines ita familias suas continerent, ut non modo armati damnum nemini darent, verum etiam lacessiti jure se potius quam armis defenderent.

9. Et quum sciret de damno legem esse Aquiliam, tamen hoc ita existimavit, apud majores nostros, quum et res et cupiditates

followed the Cod., for 'secum' is a genuine form, like 'relicum,' 'inicum.'

his] Cod. has *is*, but it means *his*, for 'his' and 'iis' or 'is' are often confounded.

7. *Datum*] The Cod. Taurin. has 'datum.' The Cod. Ambros. has 'factum.' Both 'datum' and 'factum' were used in the Roman formulae; as in the Edictum de his qui effuderint vel dejecerint (Dig. 9, tit. 3) it is said, 'quantum ex ea re damnum datum factumve erit.'

taxationem] This is the fixing or declaring the amount of the damages by the plaintiff. There is a verb 'taxare,' which appears in the adverbial form 'dumtaxat,' and in legal formulae, as in Gaius (iv. 43): "Judex N. N. A. A. dumtaxat x milia condemna." After the word 'fecimus' there is in the second edition of Orelli the words 'aestimatio vestra est.' Keller has omitted them. He does not say why.

fecimus;] The Cod. Ambros. has FECIM'.

8. *Quum omnes leges* &c.] Compare Pro Caecina, c. 2. — 'multae familiae:' this is the common Roman expression for the slaves of a man, as 'familiae publicanorum,' and other like expressions. Livy (xxxix. 29) speaks of disturbances made by the Apulian shepherds, 'qui vias latrociniis pascuaque publica infesta habuerant.' He calls this 'magnus motus servilis.'

summam rem publicam] See Pro Sex. Roscio Am. c. 51, note.

judicium] Cod. Taurin. has IUDIUM, probably a mere error of the transcriber, if it is not an abbreviation. — 'homines:' the Cod. Ambros. has 'omnis.' These words are often confounded.

9. *sciret*] Cod. Ambros. 'scirent.'—'legem esse Aquiliam.' The Lex Aquilia was enacted on the proposal of some tribune named Aquilius, but nothing is known of him or of the time when the Lex was enacted. Its purpose is explained in the Digest (Ad Legem Aquiliam, Dig. 9. 2. 1): "Lex Aquilia omnibus legibus, quae ante se de damno injuria locutae sunt, derogavit,

minores essent, et familiae non magnae magno metu continerentur, ut perraro fieret ut homo occideretur, idque nefarium ac singulare facinus putaretur, nihil opus fuisse judicio de vi coactis armatisque hominibus. Quod enim usu non veniebat, de eo si quis legem aut judicium constitueret, non tam prohibere videretur quam admonere.

10. His temporibus quum ex bello diuturno atque domestico res in eam consuetudinem venisset ut homines minore religione armis uterentur, necesse putavit esse et in universam familiam judicium dare quod a familia factum diceretur, et recuperatores dare ut

11. quam primum res judicaretur, et poenam graviorem constituere ut metu comprimeretur audacia, et illam latebram tollere DAMNUM INJURIA. Quod in aliis caussis debet valere, et valet lege Aquilia, id ex hujusmodi damno, quod vi per servos armatos datum esset * * * *

* * * *

12. * * ipsi statuerent, quo tempore possent suo jure arma capere, manum cogere, homines occidere. Quum judicium ita daret ut hoc solum in judicium veniret, videreturne vi hominibus coactis armatisve damnum dolo malo familiae datum, neque illud adderet INJURIA, putavit se audaciam improborum sustulisse, quum spem defensionis nullam reliquisset.

13. Quoniam quod judicium et quo consilio constitutum sit cognostis, nunc rem ipsam, ut gesta sit, dum breviter vobis demonstro attendite.

14. Fundum habet in agro Thurino M. Tullius paternum,

sive duodecim tabularum, sive alia quae fuit; quas leges nunc referre non est necesse. Quae lex Aquilia plebiscitum est, quum eam Aquilius tribunus plebis a plebe rogaverit."

Quod enim usu non veniebat,] 'What never happened.' See Pro Roscio Am. c. 15.—'legem aut judicium:' 'lex' is an enactment made by the 'comitia;' 'judicium' seems to mean an action established by the 'edictum.' There are many 'loci,' common topics or arguments, as Cicero calls them (Top. c. 2), which Cicero has and repeats, as men do who write or speak much in public. Thus Pro S. Roscio Amerino, c. 25, he says: "Sapienter fecisse dicitur, quum de eo nihil sanxerit quod antea commissum non erat, ne non tam prohibere quam admonere videretur." In this passage the Cod. Ambros. has 'videtur' in place of 'videretur.' Perhaps some mark of abbreviation has been omitted by the copyist.

10. *ex bello*] He alludes to the civil wars, to the times of Marius and Sullá.

dare quod] Heinrich would write 'dare si quid,' and Mai proposes 'si quod;' both which alterations are quite unnecessary. After 'judicium' the pronoun is omitted to which 'quod' refers; and this is a common form of expression in the Latin language.

11. *Damnum injuria.*] This is explained by the following sections.

Quod in aliis] Huschke thinks that the text should be 'ut quod in aliis,' though the 'ut' does not appear in the Cod., and he is probably right.

datum esset] Huschke supplies the meaning of what is lost between 'datum esset' and 'ipsi statuerent' in the following manner:—"datum esset, quodque jure umquam dari posse ne putari quidem deberet, judicio eximeretur, ne facinorosi homines ipsi statuerent."

12. *reliquisset.*] Cod. 'relinquisset.'

14. *Thurino*] 'Thyrino:' Keller, according to the Cod. Ambros. Thurii was an old

Recuperatores, quem se habere usque eo non moleste tulit, donec vicinum ejusmodi nactus est qui agri fines armis proferre mallet quam jure defendere. Nam P. Fabius nuper emit agrum de C. Claudio senatore, cui fundo erat adfinis M. Tullius, sane magno, dimidio fere pluris incultum, exustis villis omnibus, quam quanti integrum atque ornatissimum carissimis pretiis ipse Claudius emerat.

* * * *

15. * * clam circumscripsisse isti a consulari Macedonia et Asia. Etiam illud addam quod ad rem pertinet. Imperatore mortuo, pecuniam, nescio quomodo quaesitam, dum vult in praedio ponere, non posuit, sed abjecit. Nihil adhuc m * * * am calamitate vicinorum corrigit, et quod stomachum suum damno Tullii explere conatus est.

16. Est in eo agro centuria quae Populiana nominatur, Recuperatores, quae semper M. Tullii fuit, quam etiam pater possederat * * * posita esse et ad fundum ejus convenire. Ac primum, quod eum negotii totius et emptionis suae poenitebat, fundum proscripsit. Eum autem emptum habebat cum socio Cn. Acerronio viro optimo * *

* * * *

17. * * modum proscripsisse. Hominem appellat. Iste sane arroganter quod commodum fuit respondit. Nequedum fines auctor demonstraverat. Mittit ad procuratorem literas et ad

Greek settlement in Lucania, near the site of Sybaris, a still older settlement. Thurii finally received a Roman colonia, and was sometimes called Copia (Strabo, p. 263. Liv. xxxv. 9).

15. *a consulari Macedonia* &c.] We may conjecture what Cicero intended to say, which is as Huschke has it: "postea vero fundum suum vendidit (C. Claudius) P. Fabio, sordido homini, qui pecuniam in Asia et Macedonia nescio quomodo quaesitam in fundo tuto ponere properabat."

16. *centuria*] "In centuria agri jugera cc, modii DC:" Balbi ad Celsum, &c. Gromatici Veteres, ed. Lachmann, i. p. 96.

possederat] The father of Tullius had been in possession of this centuria: he was the owner of it. No other kind of Possessio is meant here.

proscripsit.] 'He put it up for sale.' See Vol. I. Verr. ii. 1. c. 15.

17. *Hominem*] See Pro P. Quintio, c. 4. — 'quod commodum fuit:' 'just as he pleased.' See Vol. I. Verr. ii. 5. c. 5. The 'auctor' is the 'seller.' See Vol. I. Verr. ii. 5. c. 22. Fabius had made his purchase jointly with Cn. Acerronius; and as he repented of his bargain, he wished to get rid of the land. He advertised it for sale, and persuaded Acerronius to buy his share; and to induce him or others to buy he had stated the quantity of land to be greater than it was, and had comprehended in it the Centuria Populiana which belonged to Tullius. It seems that Tullius was at Rome, and was informed of this intended sale and of the fraud of Fabius by his 'villicus.' Huschke in his Argumentum assumes the facts to have been after this fashion:— "Haec fraus in proscribendo fundo admissa Tullio a procuratore suo mature Romam nuntiatur. *Appellat Acerronium, ibidem tunc agentem.* (Nam Fabius in villa versabatur.) *Is a socio se fraudatum ne somnians quidem tunc sane adroganter, quod commodum fuit, respondit.* At fines Fabius auctor Acerronio nondum demonstraverat." The parts which are printed in Italics are considered by Keller to be doubtful; as in truth they are. Who can undertake to supply the deficiencies of an imperfect statement of facts?

vilicum Tullius * * *
* * * *

facturum negavit; illis absentibus fines Acerronio demonstravit; neque tamen hanc centuriam Populianam vacuam tradidit. Acerronius quomodo potuit se de tota re ex * *
* * * *

18. * * mine ejusmodi semustilatus effugit. Adducit iste interea in saltum homines electos maximis animis et viribus, et iis arma quae cuique habilia atque apta essent comparat, prorsus ut quivis intelligeret non eos ad rem rusticam, verum ad caedem ac pugnam comparari.

19. Brevi illo tempore Q. Cati Aemiliani, hominis honesti, quem vos nostis, duo homines occiderunt. Multa alia fecerunt. Passim vagabantur armati, non obscure, sed ut plane intelligere viderentur ad quam rem parati essent; agros, vias denique infestas habebant. Venit in Thurinum interea Tullius. Deinde iste paterfamilias Asiaticus, beatus novus arator et idem pecuarius, quum ambularet in agro, animadvertit in hac ipsa centuria Populiana aedificium non ita magnum, servumque M. Tullii Philinum.

20. "Quid vobis, inquit, 'stic negoti immeo est?" Servus respondit pudenter, at non stulte, dominum esse ad villam, posse eum cum eo disceptare si quid vellet. Rogat Fabius Acerronium, nam ibi tum erat, ut secum simul veniat ad Tullium. Venitur. Ad villam erat Tullius. Appellat Fabius ut aut ipse Tullium deduceret,

vilicum] See Vol. I. Verr. ii. 3. c. 50.—'vacuam:' 'vacuam tradere,' applied to the giving up of possession, means that no third person is in possession.

18. *semustilatus*] Several conjectures have been made as to the meaning of this word 'semustilatus,' or 'half burnt,' and its connection with what preceded it. But the breaks in this fragmentary oration are such that it is impossible to restore what is lost; and the uselessness of the attempts is proved by the disagreement of the editors of this oration. This remark will show why I have taken little notice of the attempts to patch up this speech. It is a want of good sense to try to do what can't be done. Keller's remark on the attempts to restore this passage, is worth quoting (p. 614):—"Quibus adhuc disputatis si quid veri inest, neminem fugit nihil egisse eos, qui supplementum undecim versiculorum comparaverint, neque in excogitando eo aliud quidquam egerint, nisi ut haec folia Ambrosiana tertium et quartum sive verbis sive sententia inter se conjungerent ac continuarent."

19. *Brevi illo tempore*] Cramer proposed to read 'illi' against the authority of the Cod.; a proof that his Latin is not so good as his law. It is a common mode of expression, as Keller shows. See Vol. I. Verr. ii. 2. c. 26, 'illo biduo.' Keller refers to the Pro Cluentio, c. 7; and the De Oratore, i. 37, 'his paucis diebus.'

Asiaticus,] This is P. Fabius, who had made his money in Asia and in Macedonia (§ 15). He had both arable land and he had cattle that he pastured. He was 'arator' and 'pecuarius.' See Vol. I. Verr. ii. 2. c. 6.

Philinum.] The Cod. has FILIUM, but it is a mistake, for in § 22 there is 'Philinus, quem antea nominavi.'

20. *inquit,*] Cod. 'Inquid:' this interchange of T and D is common in the Cod. —'immeo.' Mai has 'in meo;' but he should have followed the Cod. which represents the spoken language.

deduceret,] Fabius called on Tullius to

aut ab eo deduceretur. Dicit deducturum se Tullius, vadimonium Fabio Romam promissurum. Manet in ea conditione Fabius. Mature disceditur.

21. Proxima nocte, jam fere quum lux appropinquaret, ad illud aedificium, de quo antea dixi, quod erat in centuria Populiana, servi P. Fabii frequentes armatique veniunt. Introitum ipsi sibi vi manuque patefaciunt; homines magni pretii, servos M. Tullii, nec opinantes adoriuntur, quodque facile factu fuit, neque tam multos neque repugnantes multi armati paratique occidunt, tantumque odii crudelitatisque habuerunt ut eos omnes gurgulionibus insectis relinquerent, ne, si quem semivivum ac spirantem etiam reliquissent, minor iis honor haberetur. Praeterea tectum villamque disturbant.

22. Hanc rem tam atrocem, tam indignam, tam repentinam, nunciat M. Tullio Philinus, quem antea nominavi, qui graviter saucius e caede effugerat. Tullius statim dimittit ad amicos, quorum ea vicinitate tum illa bona atque honesta copia praesto fuit. Omnibus acerba res et misera videbatur, cum amici in comm * *

23. * * * *

* * * *

do an act or to allow him to do an act, which should be the foundation of an action for trying the question of the ownership of the 'Centuria Populiana.' This act was the 'Deductio quae moribus fit.' Savigny observes (Vermischte Schriften, Vol. i. 299, in his essay on the Lis Vindiciarum) "that it was part of the form of many disputes about property in land, that both parties should meet on the land on some day on which they agreed, and that the one should put the other out, that is, should eject him with the appearance of force; and so the whole transaction was named a conventional violence ('ex conventu vim fieri')." This form is mentioned in the oration Pro Caecina (c. 7, 8). Ownership was the foundation of the Vindicatio, or the old form of action for determining the right of ownership; and to this form of action belonged the 'Deductio quae moribus fit,' or as Gellius (xx. 10) calls it 'vis civilis et festucaria.'

vadimonium] See Vol. I. Verr. ii. 3. c. 15.

21. *pretii,*] Cod. 'praetii.'—'gurgulionibus insectis:' Martianus Capella v. 509, quoted by Keller, read 'gurgulionibus exsectis.'—'semivivum:' Cod. SEMIUIBUM. The use of B for V or U is not unusual in the old MSS., and it often occurs in the Florentine Pandect.—'reliquissent:' Cod. 'relinquissent.' — 'iis . . . haberetur:' Peyron reads 'his.' Keller observes that he could not clearly see whether the Cod. had 'is' or 'his.' But 'is' or 'iis' is certainly the proper pronoun here. Keller observes that 'iis honor haberetur' should rather be taken in the common signification than in the sense of any proper or fit reward ('justum praemium'). The notion of any reward would be absurd. The orator uses a form of expression which properly does not suit the circumstances; but there is no difficulty in understanding him. Compare 'habuit honorem ut proditori' (Vol. I. Verr. ii. 1. c. 15).

This is one of the cases ('ne . . . iis honor haberetur') in which it is sometimes supposed that the pronoun 'sibi' should be put in the place of 'iis.' But the use of 'is' in such cases is very common. There is an example in Livy, xxiii. 19, 'Gracchus assidens &c.;' and there are many in Cicero.

22. *ea vicinitate*] Beier proposes to change 'ea' into 'ex;' which proposed alteration is unnecessary. Cramer, Heinrich, and Beier would change 'tum illa bona' into 'tum illi bona' or 'tum illico bona.' Such attempts at emendation show an ignorance of the niceties of the Latin language. It is difficult to translate 'illa' in such a passage as this; but the form of expression is common. Compare Pro Sex. Roscio Amer. c. 47, 'pro illa . . parte.'

23. In this lacuna it is estimated that

24. * * turbarunt. Audite, quaeso, in eas res quas commemoro hominum honestorum testimonium. Haec, quae mei testes dicunt, fatetur adversarius eos vere dicere; quae mei testes non dicunt, quia non viderunt nec sciunt, ea dicit ipse adversarius. Nostri testes dicunt occisos homines, cruorem in locis pluribus, dejectum aedificium se vidisse. Dicunt nihil amplius. Quid Fabius? Horum nihil negat. Quid ergo addit amplius? Suam familiam fecisse dicit. Quomodo? Vi hominibus armatis. Quo animo? Ut id fieret quod factum est. Quid est id? Ut homines M. Tullii occiderentur.

25. Quod ergo eo animo factum est ut homines unum in locum convenirent, ut arma caperent, ut certo consilio certum in locum proficiscerentur, ut idoneum tempus eligerent, ut caedem facerent, id si voluerunt et cogitarunt et perfecerunt, potestis eam voluntatem, id consilium, id factum a dolo malo sejungere?

26. At istuc totum DOLO MALO additur in hoc judicio ejus caussa qui agit, non illius quicum agitur. Id ut intelligatis, Recuperatores, quaeso ut diligenter attendatis. Profecto quin ita sit non dubitabitis.

27. Si ita judicium daretur, ut id concluderetur quod a familia factum esset; si quae familia ipsa in caede interesse noluisset, et homines aut servos aut liberos coëgisset aut conduxisset; totum hoc judicium et praetoris severitas dissolveretur. Nemo enim potest haec judicare, qua in re familia non interfuisset, in ea re eam ipsam familiam vi armatis hominibus damnum dedisse. Ergo id quia poterat fieri et facile poterat, idcirco non satis habi-

we have lost as much as would be contained in two or three sheets of the Turin Cod. We have lost, as it seems, the end of the narrative, the 'partitio,' and the beginning of the 'confirmatio' (Keller).

24. *turbarunt.*] 'homines occiderunt, villam disturbarunt:' Huschke. This is a very probable restoration. — 'pluribus:' PLURIMB; which is intended for 'pluribus,' the mark over the M being the mark of expunction.

26. *At*] Cod.: AD. This interchange of T and D is common.

dolo malo] The purpose or design with which a thing is done is that which constitutes its moral and legal character. An act which is done accidentally, becomes a different act when it is done designedly (§ 51). Dolus Malus was defined by the Roman jurists (Dig. 4. tit. 3, De Dolo Malo). There was an action founded on Dolus Malus. Ulpian (Dig. 4. 3. 1. § 2) gives two definitions of Dolus Malus. The first is by Servius (Sulpicius), the friend of Cicero. The other is by Labeo; and Ulpian prefers it to the definition of Servius: "(Labeo) sic definit: dolum malum esse omnem calliditatem, fallaciam, machinationem ad circumveniendum, fallendum, decipiendum alterum adhibitam."

27. *concluderetur*] "If the form of action were allowed in such terms as to comprehend what had been done by a 'familia,'" —he means only what they did—then it might happen that the action would fail, because the wrongful act or acts might not have been done by the 'familia,' but by others at the suggestion and instigation of the 'familia.' 'Judicium dabo' is the expression of the prætor as we see in the

tum est quaeri, quid familia ipsa fecisset, verum etiam illud, quid familiae dolo malo factum esset.

28. Nam quum facit ipsa familia vi armatis coactisve hominibus et damnum cuipiam dat, id dolo malo fieri necesse est. Quum autem rationem init ut id fiat, familia ipsa non facit, fit autem dolo malo ejus. Ergo addito DOLO MALO actoris et petitoris fit caussa copiosior. Utrum enim ostendere potest, sive eam ipsam familiam sibi damnum dedisse, sive consilio et opera ejus familiae factum esse, vincat necesse est.

29. Videtis praetores per hos annos intercedere hoc interdicto velut inter me et M. Claudium: "UNDE DE DOLO MALO TUO, M. TULLI, M. CLAUDIUS AUT FAMILIA AUT PROCURATOR EJUS VI DETRUSUS EST;" cetera ex formula. Sicut ita interdictum est et sponsio facta, ego me ad judicem si defendam, vi me dejecisse confitear, dolo malo negem, ecquis me audiat? Non opinor quidem: quia, si vi dejeci M. Claudium, dolo malo de-
30. jeci; in vi enim dolus malus inest; et Claudio utrumvis satis est planum facere, vel se a me ipso vi dejectum esse, vel me consilium inisse ut vi dejiceretur. Plus igitur valet Claudi caussa, si interdicitur, unde dolo malo meo vi dejectus sit, quam si daretur,

terms of the Edicts; for instance, in the Edict De Dolo Malo (Dig. 4. tit. 3): "Verba autem edicti talia sunt: Quae dolo malo facta esse dicentur, si de his rebus alia actio non erit et justa caussa esse videbitur, judicium dabo." As to 'concluderetur,' compare Pro P. Quintio, c. 21: 'in hoc singulare judicium caussa omnis concluderetur.'

28. *ut id fiat,*] In place of 'id,' Cod. has 'ea.'

29. *interdicto*] This is the Interdictum Quotidianum, or the common Interdict de vi. The words 'interdicto velut inter' have been supplied by Huschke. Keller could discover nothing in the Cod. here. M. Tullius and M. Claudius are fictitious names, used as examples like Aulus Agerius and Numerius Negidius in Gaius. Keller refers to other examples of fictitious names in the Lex Rubria, c. 20; Cicero, Pro Caecina, c. 19; Top. c. 3; Pro Murena, c. 12; Gellius, xvi. 4.—'cetera ex formula:' Cicero has only quoted part of the formula. The remainder is given in the notes on the oration Pro Caecina. When he says 'cetera ex formula' he expresses what we now do by 'et cetera.' Gaius (iv. 43), after stating part of a formula, adds 'et reliqua,' which expresses the same as Cicero's 'cetera ex formula.' Compare Vat. Frag. § 90, and Cicero, De Inventione, ii. 42, referred to by Keller.

Sicut ita &c.] This use of 'sicut' is supposed to contain a little difficulty. Keller refers to a use of 'quomodo' in the oration Pro Caecina, c. 28, which, as he supposes, explains this passage. The difficulty seems rather to be in 'ita,' which might be considered superfluous; but it is not so. 'Sicut' refers to 'si defendam;' and 'ita' to the words of the formula, 'Unde de dolo malo.' "If exactly pursuant to the terms of the interdict and the form of the sponsio, I should make my defence before the judex, should confess that I have forcibly ejected him, should deny that I did it Dolo Molo, who would listen to me?"

ecquis] Cod.: ETQUIS. Priscian takes the 'ec' in 'ecquis' to be equivalent to 'en' or to be another form of 'en.' But 'ec' is as genuine a word as 'en;' and it means 'see.'

30. *dejiceretur.*] Cod. 'deiceretur;' a mode of writing which is undoubtedly correct.

unde dolo &c.] All the editors have, 'unde a dolo malo meo,' before Keller. In the Cod. there is an A between 'unde' and 'meo;' but the A has a point or a small line on the top, which is the mark

unde a me vi dejectus esset. Nam in hoc posteriori, nisi ipse egomet dejecissem, vincerem sponsionem; in illo priore, ubi dolus malus additur, sive consilium inissem [ut vi dejiceretur], sive ipse dejecissem, necesse erat de dolo malo meo vi dejectum judicari.

31. Hoc persimile atque adeo plane idem est in hoc judicio, Recuperatores. Quaero enim abs te, si ita judicium datum esset "QUANTAE PECUNIAE PARET A FAMILIA P. FABI VI HOMINIBUS ARMATIS DAMNUM M. TULLIO FACTUM," quid haberes quod diceres? Nihil, opinor. Fateris enim omnia, et familiam P. Fabii fecisse, et vi hominibus armatis fecisse. Quod additum est, DOLO MALO, id te adjuvare putas; in quo opprimitur et excluditur omnis tua defensio.

32. Nam si additum id non esset, ac tibi libitum esset ita defendere, tuam familiam non fecisse, vinceres, si id probare potuisses. Nunc, sive illa defensione uti voluisses, sive hac qua uteris, condemneris necesse est, nisi putamus, eum in judicium venire qui consilium inierit, illum qui fecerit non venire, quum consilium sine facto intelligi possit, factum sine consilio non possit. An quod factum ejusmodi est ut sine occulto consilio, sine nocte, sine vi, sine damno alterius, sine armis, sine caede, sine maleficio fieri non potuerit, id sine dolo malo judicabitur?

33. An qua in re praetor illi improbam defensionem tolli voluit, in ea re mihi difficiliorem actionem factam putabitis? Hic mihi isti singulari ingenio videntur esse, qui et id, quod mihi contra illos datum est, ipsi arripiunt, et scopulo atque saxis pro portu stationeque utuntur. Nam in dolo malo volunt delitescere, in quo non modo quum omnia ipsi fecerunt, verum etiam si per alios id fecissent, haererent ac tenerentur.

to express that a letter is to be *expunged;* and 'dolo malo' is written above 'meo,' and in smaller characters. There is an example in c. 24; and in § 21, instead of 'occidunt' the Cod. has OCCIDUMNT.

vincerem sponsionem;] This is the same as saying 'judgment would be in my favour;' or 'I should gain the sponsio.' 'Sponsio' has been explained before.

31. *vi*] 'vi' is not in the Cod.; and it is Huschke's addition. There is little doubt that it is right. In § 21 also *vi* has been supplied; and in both cases the omission of the word in the Cod. is explained by the fact of the preceding word ending in BI.

32. *sive*] Cod. 'sibe.'

eum in judi] These words have been supplied by Peyron, and it is almost certain that they are the genuine words. 'Is' and 'ille' are often opposed in Cicero.

intelligi] "A design may be conceived as existing without an act, but an act cannot be conceived as done without a design." Cicero had said that Fabius must be convicted either way, whether the formula contained the words Dolo Malo or not; unless we suppose that a man is on his trial who has merely formed a design, not executed it; and that the doer of the act is not on his trial.

33. *praetor*] 'Cod. P. R.—mendo vulgatissimo' (Keller).—'delitescere:' Cod. 'delitiscere.'

34. Ego non in una re sola, quod mihi satis est, neque in universa re solum, quod mihi satis est, sed singilatim in omnibus dolum malum exstare dico. Consilium capiunt ut ad servos M. Tullii veniant: dolo malo faciunt. Arma capiunt: dolo malo faciunt. Tempus ad insidiandum atque celandum idoneum eligunt: dolo malo faciunt. Vi in tectum irruunt: in ipsa vi dolus est. Occidunt homines, tectum diruunt: nec homo occidi nec consulto alteri damnum dari sine dolo malo potest. Ergo si omnes partes sunt ejusmodi ut in singulis dolus malus haereat, universam rem et totum facinus sine dolo malo factum judicabitis?

35. Quid ad haec Quinctius? Sane nihil certum neque unum in quo non modo possit, verum putet se posse consistere. Primum enim illud injecit, nihil posse dolo malo familiae fieri. Hoc loco non solum fecit ut defenderet Fabium, sed ut omnino hujuscemodi judicia dissolveret. Nam si venit id in judicium de familia, quod omnino familia nulla potest committere, nullum est judicium, absolvantur omnes de simili caussa necesse est.

36. Hoc solum, bona mehercule fide, si hoc solum esset, tamen vos, tales viri, nolle deberetis maximam rem conjunctam cum summa re publica fortunisque privatorum, severissimum judicium maximaque ratione compositum per vos videri esse dissolutum. Sed non id solum agitur * * *

* * * *

hoc judicium sic exspectatur ut non unae rei statui, sed omnibus constitui putetur * * * *

* * * *

[Dicam vim factam a P. Fabii familia. Adversarii non negant.

34. *atque celandum*] Cod. 'adque.' The same interchange of T and D has been noticed before. In the next section the Cod. has 'illut' for 'illud.'

35. *certum*] Cod. CERTIUM, with the mark of expunction over the I.

de simili caussa] The commentators don't agree about the meaning of these words, but I don't see the difficulty. Cicero says, "for if an act concerning a man's 'familia' is a matter for trial, and the act is such that a 'familia' cannot commit it, there is no trial: it follows that all in a like case must be acquitted." That is, a 'familia' cannot commit an act Dolo Malo; and accordingly in all like cases there must be an acquittal. Keller understands it so. The meaning is plain.

36. *deberetis*] Keller says that he cannot determine whether the Cod. has 'deseretis' or 'deberetis.' Huschke conjectures 'nolletis deserere,' but he ingenuously admits that he prefers the other reading; and I see no reason for rejecting the other. As to the form 'nolle debere' Keller refers to Cicero, De Off. i. 1 and 6; Pro Lege Manilia, c. 16; De Provinc. Consul. c. 14, where the form 'velle debere' occurs.

summa re publica] Some editors have 'summa re fortunisque;' but Orelli conjectured the reading in the text, which is the true reading. For Keller saw clearly in the Cod. the following: SUMMA REPFORTUNISQ.—'hoc judicium . . . constitui putetur:' these words are from Priscian (vi. 1, 5, p. 221, ap. Krehl; p. 678, ap. Putsch.; quoted by Keller). Priscian quotes the passage as evidence of the dative 'unae:' the datives 'ullae,' 'alterae,' also and others occur in 'usu antiquiore,' as he says.

Dicam vim factam . . . de hoc judicium

Damnum datum esse M. Tullio concedis: vici unam rem. Vim hominibus armatis factum non negas: vici alteram. Dolo malo factum negas: de hoc judicium est.] * * * * * * *

37. * * ego intelligo; et tamen dicendum est ad ea quae dixit Quinctius, non quo ad rem pertineat, sed ne quid quia a me praetermissum *est* pro concesso putetur.

38. Dicis oportere quaeri, homines M. Tullii injuria occisi essent necne. De quo hoc primum quaero, venerit ea res in hoc judicium necne. Si non venit, quid attinet aut nos dicere, aut hos quaerere? Si autem venit, quid attinuit te tam multis verbis a praetore postulare ut adderet in judicium INJURIA, et, quia non impetrasses, tribunos pl. appellare, et hic in judicio queri praetoris iniquitatem quod de injuria non addiderit?

39. Haec quum praetorem postulabas, atque tribunos appellabas, nempe ita dicebas, potestatem tibi fieri oportere, ut, si posses, recuperatores persuaderes non esse injuria M. Tullio damnum datum. Quod ergo ideo in judicium addi voluisti, ut de eo tibi apud recuperatores dicere liceret, eo non addito nihilo minus tamen ita dicis, quasi id ipsum a quo depulsus es impetraris? At quibus

est.] These words are from Victorinus, p. 63, ed. Orelli. Peyron placed them at § 23, which Keller considers to be the right place for them, and he says that Beier made a great mistake in placing them here. Again, he contends that we cannot get the genuine words of Cicero from Victorinus, and this will seem likely enough to any one who examines the passage of Victorinus. Huschke thinks that we can make up the deficiency better from Martianus Capella (5, 556; p. 471, ed. Kopp); and he has attempted to do it.

38. *injuria*] Cicero says that the defendant wished to have the question tried whether the slaves of M. Tullius were killed 'injuria,' which properly means contrary to 'jus' or wrongfully. But such an inquiry was foreign to the matter, for the object of the Edictum of Lucullus was to make masters answerable for the violent acts of their slaves, and to prevent them using arms even if they were provoked (§ 8). Accordingly this inquiry did not form a part of the present investigation (si non venit, &c.): and if it did, what need was there for saying so much about it to the Praetor, and for appealing to the Tribuni Plebis after he had refused to make the 'injuria' a part of the inquiry?

Here we have another instance of an appeal from the Praetor to the Tribuni (Pro P. Quintio, c. 7). Cicero here taunts his adversary with complaining 'in judicio,' in the trial before the Recuperatores of the unfairness of the Praetor in refusing to add the word 'injuria;' and his complaint is reasonable, for the Recuperatores had nothing to do with the decision of the Praetor. They had only to obey his orders. Yet Cicero, in the oration Pro P. Quintio, makes the same complaint himself (Pro P. Quintio, c. 2 note); and with as little reason as the advocate of Fabius made it now.

addiderit?] The Cod. has ADDIDERET, as it appears, but it does not seem quite certain whether it may not be 'addiderit;' and this appears to be the genuine word.

39. *recuperatores*] So it is written in the Cod. Keller quotes Servius ad Aen. x. 10, ex Ennio: 'quis te persuasit.' But in § 43 of the oration there is 'hoc talibus viris persuaderi.'

depulsus] This word is uncertain. All that is legible is * E * * * S * S; and Keller says that he could hardly see any thing of these five letters. Peyron has 'detrusus.'

verbis in decernendo Metellus usus est? Ceteri, quos appellasti? Nonne haec fuit omnium oratio, quod vi hominibus armatis coactisve familia fecisse diceretur, id tametsi nullo jure fieri potuerit, tamen se nihil addituros?

40. Et recte, Recuperatores. Nam quum perfugio nullo constituto tamen haec scelera servi audacissime faciant, domini impudentissime confiteantur, quid censetis fore si prætor judicet ejusmodi caedes fieri jure posse? An quidquam interest, utrum magistratus peccato defensionem constituant an peccandi potestatem licentiamque permittant?

41. Etenim, Recuperatores, non damno commoventur magistratus ut in haec verba judicium dent. Nam id si esset, nec recuperatores potius darent quam judicem, nec in universam familiam, sed in eum quicum nominatim ageretur, nec in quadruplum, sed in duplum, et ad DAMNUM adderetur INJURIA. Neque enim is qui hoc judicium dedit de ceteris damnis ab lege Aquilia recedit, in quibus nihil agitur nisi damnum, qua de re praetor animum debet advertere.

42. In hoc judicio videtis agi de vi, videtis agi de hominibus armatis, videtis aedificiorum expugnationes, agri vastationes, hominum trucidationes, incendia, rapinas, sanguinem in judicium venire. Et miramini satis habuisse eos qui hoc judicium dederunt, id quaeri, utrum haec tam acerba, tam indigna, tam atrocia facta essent necne; non, utrum jure facta an injuria?. Non ergo praetores a lege Aquilia recesserunt quae de damno est; sed de vi et armis

Metellus] He was one of the Tribuni Pl. It seems from this that the Tribuni had in some cases the power of modifying the Praetor's order. Otherwise why should they declare that they would not add the word 'injuria?' I have remarked before that the Tribuni Pl. could not modify the Praetor's order (Pro P. Quintio, c. 7 note); in which I followed Keller. But this passage seems to lead to a different conclusion.

40. *fieri jure*] The dispute about the addition of the word 'injuria' seems to us trifling; for the words 'dolus malus' (§ 29) exclude the notion of an act being done 'jure.'

41. *ut in haec verba*] He means the words of the formula on which this action was founded. It was not the 'damnum,' the damage done, which was the matter of this form of action. It was the violence, the armed force, the petty war which the Edict was designed to repress (§ 42). If 'damnum' simply was the matter of the action, the question would have been tried before a 'judex,' the doer of the 'damnum' would be responsible for his own act only; the damages would be laid, as we say, 'in duplum' only; and the question would also be if the 'damnum' was done 'injuria' or wrongfully. The first chapter of the Lex Aquilia is as follows: "Lege Aquilia capite primo cavetur: Qui servum servamve alienum alienamve, quadrupedem vel pecudem injuria occiderit, quanti in eo anno plurimi fuit tantum aes dare domino damnas esto" (Dig. 9. 2. 1). On which the remark of Gaius is: "Et infra deinde cavetur ut adversus infitiantem in duplum actio sit." Ulpian (Dig. 9. 2. 3) observes of the word 'injuria:' "Injuria merito adjicitur; non enim sufficit occisum, sed oportet injuria id esse factum."

42. *de vi et armis*] Peyron has 'armatis,' but Keller has explained very clearly that

severum judicium constituerunt; nec jus et injuriam quaeri nusquam putarunt oportere, sed eos qui armis quam jure agere maluissent, de jure et injuria disputare noluerunt.

43. Neque ideo de injuria non addiderunt quod in aliis rebus non adderent, sed ne ipsi judicarent posse homines servos jure arma capere et manum cogere, neque quod putarent, si additum esset, posse hoc talibus viris persuaderi non injuria factum, sed ne quod tamen scutum dare in judicio viderentur iis quos propter haec arma in judicium vocavissent.

44. Fuit illud interdictum apud majores nostros de vi, quod hodie quoque est, UNDE TU AUT FAMILIA AUT PROCURATOR TUUS ILLUM AUT FAMILIAM AUT PROCURATOREM ILLIUS IN HOC ANNO VI DEJECISTI. Deinde additur illius jam hoc caussa quicum agitur, QUUM ILLE POSSIDERET, et hoc amplius, QUOD NEC VI NEC CLAM NEC PRECARIO POSSIDERET.

45. Multa dantur ei qui vi alterum detrusisse dicitur, quorum si unum quodlibet probari judici potuerit, etiam si confessus erit se vi dejecisse, vincat necesse est; vel non possedisse eum qui dejectus sit, vel vi ab se possedisse, vel clam, vel precario. Ei qui de vi confessus esset tot defensiones tamen ad caussam obtinendam majores reliquerunt.

46. Age illud alterum interdictum consideremus, quod item *nunc* est constitutum propter eandem iniquitatem temporum, nimi-

'armatis,' which was originally written in the Cod., was afterwards altered into 'armis' by the copyist.

43. *injuria*] Cod. INIURIAM; with the usual mark of expunction over the M.

44. *hodie*] Cod. HODIAE.—'precario:' Cod. PRAECARIO.—The nature of the Interdictum de vi is explained in the notes on the Pro Caecina.

45. *Multa dantur*] So much as this may be said here to explain the text. If a man was forcibly ejected from a piece of land, he could not avail himself of the common Interdictum de vi and be restored to his former state, unless he had a Juristical Possession. He must have such a Possession as the law required. Also, he could not avail himself of the Interdict against another man, if he had got into the land by driving the other out; or if he had by fraud and stealth got into it; or if he had been permitted to go into it by the other on the condition that he must give it up again. 'Precario' is defined by Ulpian (Dig. 43. 26. 1): "Precarium est quod precibus petenti utendum conceditur tamdiu quamdiu is qui concessit patitur." These three modes of getting possession by force, or fraud, or 'precario,' are alluded to by the Roman writers, as by Terence, Eunuch. ii. 3. 27:

> "Hanc tu mihi vel vi vel clam vel precario
> Fac tradas: mea nihil refert, dum potiar modo."

And Horace, Ep. ii. 2. 173, has an allusion to the 'precario' and the 'vi:'

> "Nunc prece, nunc pretio, nunc vi, nunc sorte suprema
> Permutet dominos et cedat in altera jura."

tamen] 'Still so many ways of defence,' though he has admitted the fact of 'vis.' Cicero and Terence use this word just in the same way.

46. *illud alterum interdictum*] This is the 'Interdictum de vi hominibus coactis armatisve' (Pro Caecina, c. 8), as Huschke and Keller maintain. See Keller, Semestr.

amque hominum * * * * * * *

47. * * boni debent dicere. Atque ille legem mihi de XII tabulis recitavit, quae permittit ut furem noctu liceat occidere, et luci, si se telo defendat, et legem antiquam de legibus sacratis quae jubeat impune occidi eum qui tribunum pl. pulsaverit. Nihil, ut opinor, praeterea de legibus.

48. Qua in re hoc primum quaero, quid ad hoc judicium recitari istas leges pertinuerit. Num quem tribunum pl. servi M. Tullii pulsaverunt? Non opinor. Num furatum domum P. Fabii noctu venerunt? Ne id quidem. Num luce furatum venerunt et se telo defenderunt? Dici non potest. Ergo istis legibus quas recitasti certe non potuit istius familia servos M. Tullii occidere.

49. Non, inquit, ad eam rem recitavi, sed ut hoc intelligeres, non visum esse majoribus nostris tam indignum istuc nescio quid quam tu putas, hominem occidi. At primum istae ipsae leges quas recitas, ut mittam cetera, significant quam noluerint majores nostri, nisi quum pernecesse esset, hominem occidi. Primum ista lex sacrata est, quam rogarunt armati ut inermes sine periculo possent esse. Quare non injuria, quo magistratu munitae leges sunt, ejus magistratus corpus legibus vallatum esse voluerunt.

50. Furem, hoc est, praedonem et latronem, luce occidi vetant XII tabulae. Quum intra parietes tuos hostem certissimum teneas, nisi SE TELO DEFENDIT, inquit, etiamsi cum telo venerit, nisi utetur

p. 327, note. Savigny thinks that both the Interdict mentioned in this §, and in § 29, referred to the common Interdict de vi. But the whole context shows that one Interdict is opposed to or contrasted with another; and this 'alterum,' or other, § 46, is the Interdict about force of arms, as opposed to the common Interdict. See the Introduction to the Pro Caecina.

47. XII *tabulis*] This passage of the Twelve Tables is also quoted by Macrobius, Saturn. i. 4: 'Si nox furtum factum sit, si im occisit, jure caesus esto.' Macrobius quotes these words because they contain an instance of 'nox' in the sense of 'noctu.' The substance of this Lex is also stated by Gellius, xi. 18; Gaius, Dig. 47. 2. 56; Cicero, Pro Milone, c. 3. The passages are collected and the text of the Lex examined by Dirksen, Zwölf-Tafel-Fragmente, &c., p. 564.

A reader will wonder why the opponents of Cicero cited these Leges. But Cicero will tell him in the next section.

luci,] This is the reading of the Cod., though 'luce' occurs soon after.

legibus sacratis] These 'leges' are mentioned by Livy (ii. 54) and by Cicero (De Off. iii. 33). A 'lex sacrata' was a 'lex' of which the sanction or penalty was the making a thing or person 'sacer,' as in Livy (ii. 8), where he speaks of leges "de sacrando cum bonis capite ejus qui regni occupandi consilia inisset."

49. *ista lex sacrata*] He alludes to the secession of the 'plebs' and the institution of the 'tribuni plebis' (Liv. ii. 32, 33): "concessumque in conditiones ut plebi sui magistratus essent sacrosancti."

50. *inquit,*] There is no nominative to 'inquit.' All that it can refer to is the plural 'XII tabulae;' and 'lex' may be considered as the suppressed nominative, if any one chooses. But 'inquit' was used by the Romans without any regard to grammatical propriety, as it is here; and it may be translated, 'it is said' in the Lex XII. Tab.

telo eo ac repugnabit, non occides. Quod si repugnat, ENDOPLORATO, hoc est, conclamato, ut aliqui audiant et conveniant. Quid ad hanc clementiam addi potest, qui ne hoc quidem permiserint ut domi suae caput suum sine testibus et arbitris ferro defendere liceret?

51. Quis est cui magis ignosci conveniat, quoniam me ad XII tabulas revocas, quam si quis quem imprudens occiderit? Nemo, opinor. Haec enim tacita lex est humanitatis, ut ab homine consilii non fortunae poena repetatur. Tamen hujusce rei veniam majores non dederunt. Nam lex est in XII tabulis, *SI TELUM MANU FUGIT MAGIS QUAM JECIT* * * * * * *

52. Si qui furem occiderit, injuria occiderit. Quam ob rem? quia jus constitutum nullum est. Quid si se telo defenderit? Non injuria. Quid ita? Quia constitutum est * * * * * *

53. * * tamen verum factum esset [non modo servos], tamen in eo ipso loco qui tuus esset, non modo servos M. Tullii occidere jure non potuisti, verum etiam, si tectum hoc insciente aut per vim demolitus esses, quod hic in tuo aedificasset et suum esse defenderet, id vi aut clam factum judicaretur. Tu ipse jam statue quam verum sit, quum paucas tegulas dejicere impune familia tua non potuerit, maximam caedem sine fraude facere

Quod si] Cod. QUOSSI; which probably represents the familiar pronunciation.

qui ne hoc &c.] Keller puts the note of interrogation after 'addi potest;' but this position of this importunate sign only obscures the sense for those who read by the aid of stops, instead of the sense. There is no antecedent to 'qui' nearer than 'majores nostri' in § 49; but the antecedent is easily derived from the words 'hanc clementiam,' which are the same as 'majorum nostrorum clementiam.' 'Qui . . permiserint' is a form which all careful students can distinguish from the direct affirmation 'qui . . . permiserunt.' 'Qui . . . permiserint' expresses the mildness or moderation of the men of old time shown 'by not allowing even, &c.'

51. *—gis quam jecit*] These words are wanting in the Cod. Peyron added them on the authority of a passage in Cicero's Topica, c. 17: "nam jacere telum voluntatis est: ferire quem nolueris, fortunae. Ex quo aries ille subjicitur in vestris actionibus: Si telum manu fugit magis quam jecit." Compare De Oratore, iii. 39; where Cicero gives this expression as an instance of a metaphor (verbi translatio): "nonnunquam etiam brevitas translatione conficitur; ut illud, Si telum manu fugit: imprudentia teli emissi brevius propriis verbis exponi non potuit quam est uno significata translato."

52. *Si qui . . . . . constitutum est.*] This fragment is from the work of Julius Rufinianus De figuris sententiarum et elocutionis, § 8. It is not certain where this fragment should be placed, but it is probably in the right place here.

53. *dejicere*] Cod. DEICERE.—'potuisse. Et ego:' the Cod. has POTUISSETEGO, and Mai and Peyron edited 'potuisset. Ego.' The first part of this section is in confusion. Cicero's argument is that the slaves of Fabius could not have lawfully killed the slaves of Tullius even on the ground of Fabius; and further, that he could not have pulled down, either without the knowledge of Tullius, or by force, a building which Tullius had erected on the ground of Fabius, if

potuisse. Et ego ipse tecto illo disturbato si hodie postulem, quod vi aut clam factum sit, tu aut per arbitrum restituas aut sponsione condemneris necesse est. Nunc hoc probabis viris talibus, quum aedificium tuo jure disturbare non potueris, quod esset, quemadmodum tu vis, in tuo, homines qui in eo aedificio fuerint te tuo jure potuisse occidere.

54. At servus meus non comparet, qui visus est cum tuis. At casa mea est incensa a tuis. Quid ad haec respondeam? Ostendi falsa esse: verumtamen confitebor. Quid postea? Hoc sequitur ut familia M. Tullii concidi oportuerit? Vix, mehercule, ut corium peti, vix, ut gravius expostulari, verum ut esses durissimus, agi quidem usitato jure et quotidiana actione potuit. Quid opus fuit vi, quid armatis hominibus, quid caede, quid sanguine?

55. At enim oppugnatum me fortasse venissent. Haec est illorum in caussa perdita extrema non oratio neque defensio, sed conjectura et quasi divinatio. Illi oppugnatum venturi erant? Quem? Fabium. Quo consilio? Ut occiderent. Quam ob

Tullius maintained that the ground was his. —'verum:' 'reasonable,' 'just,' and the like; a common meaning of the word.

quod vi &c.] Cicero alludes to the Interdictum Quod vi aut clam. Ulpian says (Dig. 43. 24. 1): "Praetor ait: Quod vi aut clam factum est, qua de re agitur, id quum experiundi potestas est restituas. § 1. Hoc interdictum restitutorium est, et per hoc occursum est calliditati eorum qui vi aut clam quaedam moliuntur; jubentur enim ea restituere. § 2. Et parvi refert utrum jus habuerit faciendi an non; sive enim jus habuit sive non, tamen tenetur interdicto, propterea quod vi aut clam fecit; tueri enim jus suum debet, non injuriam comminisci."

If any act had been done 'vi aut clam,' and the wrong doer obeyed the terms of the edict, the matter was at an end. If the edict was not obeyed, the Praetor gave a 'judicium;' and a 'judex' was named who received his instructions (formula); as Gaius (iv. 14) explains it: "nec tamen quum quid jusserit fieri aut fieri prohibuerit, statim peractum est negotium, sed ad judicem recuperatoresve itur et ibi editis formulis quaeritur an aliquid adversus praetoris edictum factum sit vel an factum non sit quod is fieri jusserit." The 'restitutio' consisted in making the thing as good as it was before the mischief was done, or in making compensation (Dig. 43. 24. 15. § 7). In the case of the Interdictum Restitutorium the proceedings which might follow the Interdict were before an 'arbiter' (per arbitrum restituas), as Gaius says (iv. 161, 162): for the object was restitution and compensation; and the determination of the amount belonged to the office of an 'arbiter.' If the affair was not referred to an 'arbiter,' the 'praetor' named 'recuperatores,' and the proceeding was by a 'sponsio.' Gaius says (iv. 141): "et quidem ex prohibitoriis interdictis semper per sponsionem agi solet; ex restitutoriis vero vel exhibitoriis modo per sponsionem, modo per formulam agitur quae arbitraria vocatur."

The example of taking off the tiles which Cicero mentions occurs in the Digest (43. 21. 7. § 9, 10): "si quis aedificium demolitus fuerit, quamvis non usque ad solum, quin interdicto teneatur dubitari desiit. Proinde et si tegulas de aedificio sustulerit, magis est ut interdicto teneatur." The office of the 'arbiter' in the case of the Interdictum Quod vi aut clam is mentioned in the Digest (43. 21. 15. § 11). There are some remarks on this subject by Haubold (Zeitschrift für Geschicht. Rechtsw. iii. p. 383, &c.).

54. *At*] Cod.: AD, as usual.—'corium peti:' I do not understand this. Peyron supposes that a line has been lost out of the Cod. Taurin, between 'co' and 'rium,' and thence has arisen the word 'corium.' This is ingenious, and it may be true. For the infinitive 'gravius expostulari' seems to want something to depend on.

caussam? Quid ut proficerent? Qui comperisti? Et ut rem perspicuam quam paucissimis verbis agam, dubitari hoc potest, Recuperatores, utri oppugnasse videantur, qui ad villam venerunt, an qui in villa manserunt? qui occisi sunt, an ii ex quorum numero saucius factus est nemo? qui cur facerent caussa non fuit, an ii qui fecisse se confitentur?

Verum ut hoc tibi credam, metuisse te ne oppugnarere, quis hoc statuit unquam, aut cui concedi sine summo omnium periculo potest, ut eum jure potuerit occidere, a quo metuisse se dicat ne ipse posterius occideretur?

Cetera desiderantur.

55. *villa*] Cod. UILLAM.—'saucius:' Cod. 'sauccius.'—The last words, 'Quis hoc statuit . . . . . . occideretur' are from Quintilian, Inst. Or. v. 13, 21.

PRO M. FONTEIO

ORATIO.

INTRODUCTION.

M. Fonteius was the son of M. Fonteius, the legatus of P. Servilius Caepio. The father lost his life at Asculum at the commencement of the Social War (c. 18). The son filled many offices before he was praetor of the Gallia Provincia. Cicero (c. 3) speaks of Fonteius having been a triumvir and a quaestor, and of having discharged both duties 'ante oculos;' whence Niebuhr concludes that the 'triumviratus' of which Cicero speaks was a 'triumviratus monetalis,' or a superintendence of the Roman moneta (mint). Drumann affirms that he was a triumvir col. ded. s. agr. divid. The quaestorship of Fonteius was after the enactment of the Lex Valeria (c. 3), and before his legatio in Spain, the time of which is fixed by Cicero (adventu L. Sullae) at B.C. 83, in the consulship of Scipio and Norbanus (Liv. Epit. 85). This was the year in which Sertorius fled to Spain. He was afterwards legatus in Macedonia, during which time he repelled a Thracian invasion. There is no evidence that he held the office of praetor in Rome; and it seems likely that when he was elected, he was sent into the Provincia. During the campaign of Pompeius against Sertorius, Fonteius was praetor of Gallia, and Cicero (c. 7) says that he was praetor during the year in which one of Pompeius' armies wintered in Gallia. This may show that Fonteius was two years at least in Gallia, as the army of Pompeius would spend in Gallia the end of one year and the beginning of the next. It appears to have been in the beginning of B.C. 75 that Metellus and Pompeius left the neighbourhood of the Pyrenees to recommence the campaign against Sertorius (Appian, B. C. i. 110). Fonteius during his praetorship sent supplies to the Roman armies in Spain (c. 6); but we cannot learn from Cicero with certainty whether these supplies were sent before or after the army of Pompeius wintered in Gallia. The letter of Pompeius to the Senate (Sallust, Frag. Hist. Lib. iii.) says

that in the year before the year in which he was writing Gallia supplied the army of Metellus in Spain. Pompeius wrote after the battle on the Durius or Turia, and the defeat of Herennius and the capture of Valentia. The year in which the supplies were sent into Spain is fixed by Drumann at B.C. 75, and the year in which the army of Pompeius wintered in Gallia at B.C. 74. It is uncertain whether the third year of Fonteius' praetorship was B.C. 76 or B.C. 73. Niebuhr assumes that Fonteius began his Gallic praetorship in B.C. 75, the year in which he sent supplies to Spain, and accordingly his three years' governorship must have been completed in B.C. 73. But the argument is not very clear on this point. Pompeius in his letter speaks of Gallia having supplied the army of Metellus the year before (superiore anno), which may imply that Gallia aided the Spanish army before Fonteius was in Gallia, for Metellus was in Spain in B.C. 78; or, if Pompeius is speaking of the supplies of Metellus sent by Fonteius, he may refer to the year B.C. 77, the year before Pompeius went to Spain, which was B.C. 76. But the whole matter is so confused, that it is impossible to settle the chronology further than this, that the Gallic praetorship of Fonteius was contemporaneous with part of the time when Pompeius was in Spain.

The year in which this speech was delivered is not certain, but it was after the enactment of the Lex Aurelia (B.C. 70), which took the Judicia from the Senators, and made the Judices eligible from the Senatores, Equites, and Tribuni Aerarii.

Fonteius was tried as it seems under the Lex Cornelia Repet. (B.C. 81), which was founded on the Lex Servilia (B.C. 106, or 105; but the date is uncertain). The prosecutor of Fonteius was M. Plaetorius, and the subscriptor was M. Fabius. The Galli of the Provincia sent their witnesses to Rome to bear evidence against Fonteius, and among them Indutiomarus, a chief of the Allobroges. The witnesses in defence of Fonteius were from Spain, Macedonia, Massilia, and Narbo, the soldiers of the army of Pompeius who had wintered in Gallia, and Publicani and other Romans who had been in Gallia during the praetorship of Fonteius. This prosecution and the defence must have cost a large sum of money. The case was heard twice, or rather adjourned from the first hearing to the second; which was allowed both by the Lex Servilia and the Lex Cornelia.

The fragments of this speech belong to the second 'actio;' and in its present state it is obscure. The fragment which Niebuhr discovered in a Vatican Palimpsest supplies a part of the defect at the beginning of the speech. Cicero in his speeches against Verres reviewed all the life of the accused, all his public acts, though the conduct of Verres in Sicily was the only ground of the prosecution. The prosecutor Plaetorius did the same in the case of Fonteius, and Cicero had not only to

reply to the charge of Repetundae brought against Fonteius for his conduct in Gallia, but to defend all his public acts previous to his praetorship.

Niebuhr, M. Tullii Ciceronis Orationum Pro M. Fonteio, &c. Romae, 1820; Drumann, Geschichte Roms, V. Tullii, § 18.

The oration Pro M. Fonteio in the new edition of Orelli's Cicero is edited by C. Halm, who has given the readings of a very old Codex 'qui in tabulario basilicae Vaticanae asservatur.' This is V. He has also given the collation of another MS., which is marked S. He observes that V is the original of all the MSS. of this oration.

M. TULLII CICERONIS

PRO

M. FONTEIO ORATIO.

FRAGMENTA.

Fragmenta e cod. palimpsesto Vatic. a Niebuhrio edita.

I. * * * oportuisse; an ita dissolvit, ut omnes alii dissolverunt? Nam ita ego defendo M. Fonteium, judices, itaque contendo, post legem Valeriam latam * * * te * * * quaestore usque ad Titum Cris-

1. *itaque contendo,*] For 'et ita contendo' (Niebuhr). It is only necessary to give this second 'ita' its proper emphasis in order to make the meaning clear.

legem Valeriam] See Pro P. Quintio, c. 4. This Lex was enacted in the consulship of L. Valerius Flaccus, B.C. 86. After 'latam' Niebuhr added 'a M. Fonteio,' though Fonteius was not, as he admits, the first quaestor who made payments pursuant to the Lex Valeria; but he followed, as Niebuhr says, the example of previous quaestors. This is clearly not the meaning of the passage. We want the name of the quaestor who first made payments pursuant to the Lex Valeria, as Mommsen observes. The words 'hunc omnium superiorum,' &c. show that Mommsen's remark is true.

The Lex Valeria reduced existing debts to one-fourth. It was a declaration of general insolvency, such as was made at Rome sometimes. In England we have a court always open for settling the affairs of insolvents, where creditors often get nothing. Niebuhr observes that such 'leges' as this could only apply to debts contracted before the enactment of the 'leges;' which is obvious enough. It appears that the 'aerarium' also, according to the Lex Valeria, paid its debts 'quandrante,' or at the rate of one-fourth instead of the whole. The question which Cicero discusses here is whether Fonteius as quaestor made the payments as he ought to have done.

Hirtuleius seems to have been the quaestor of the year in which the Lex Valeria was enacted. Niebuhr explains the 'tabulae dodrantariae et quadrantariae' thus. When Hirtuleius on the public account made a payment of one-fourth of a debt, he would enter it as a payment of the whole debt; but, in order to keep the accounts straight, he must also enter three-fourths of the amount on the other side. If he received one-fourth on account of a debt due to the aerarium, he must enter three-fourths on the other side.

usque] Cod. has 'usquae.' We know how often the terminations 'quae' and 'que' were confounded. Niebuhr cites as an instance, from the Cenotaphium Pisanum Caii Caesaris, the forms 'coloniae nostre,'

pinum quaestorem aliter neminem solvisse: hunc omnium superiorum, hujus autem omnes qui postea fuerint auctoritatem dico secutos. Quid accusas? quid reprendis?

Nam quod in tabulis dodrantariis et quadrantariis, quas ait ab Hirtuleio institutas, Fonteii officium desiderat, non possum existimare utrum ipse erret an vos in errorem ducere velit. Quaero enim abs te, M. Plaetori, possitne tibi ipsi probata esse nostra caussa, si, qua in re abs te M. Fonteius accusatur, auctorem habet eum quem tu maxime laudas, Hirtuleium; qua in re autem laudas Hirtuleium, Fonteius idem fecisse reperitur. Reprehendis solutionis genus: eodem modo Hirtuleium dissolvisse publicae tabulae coarguunt. Laudas illum quod dodrantarias tabulas instituerit: easdem Fonteius instituit, et eodem genere pecuniae. Nam ne forte sis nescius, et istas tabulas existimes ad diversam veteris aeris alieni rationem pertinere, ob unam caussam et in uno genere sunt institutae. Nam cum publicanis, qui Africam, qui Aquiliense portorium conducta habebant * * *

II. * * * cite * * * Nemo, nemo inquam, judices, reperietur qui unum se in quaestura M. Fonteio nummum dedisse, aut illum ex ea pecunia quae pro aerario solveretur detraxisse dicat: nullius

'statuae inaurate.'—'Titum:' the praenomen is written thus in the Cod.—'quaestorem:' the Cod. has only 'que.' Though this does not appear in the list of abbreviations as expressing 'quaestore' or 'quaestorem,' there is no doubt that 'quaestorem' is the right word.—'omnes:' the Cod. has 'omnis.' Niebuhr concludes that as all the best MSS. of the orations, which are also among the oldest, have this form so often, it should be restored to Cicero. The conclusion is not a safe one; nor is this orthographical question of any value to us. Even this Cod. has 'omnes' in the nom. plural. —'accusas . . . reprendis:' Cod. has 'accussas' and 'repraendis.' Niebuhr retains 'accussas,' and has a long note on it. He writes 'reprendis.' Roman orthography perplexes us, as it perplexed the Romans, for it changed continually. As to 'accussas,' Niebuhr says: "M. Annaeus Cornutus in Cassiodori excerptis p. 2283, *antiqui*, inquit, *accussare per duo SS scripserunt:* quam eandem scripturam vocis *caussa* fuisse testatur: et Quintilianus quidem diserte tradit (i. c. 7) Ciceronem literam S geminasse quoties media vocalium longarum vel subjecta longae esset, itaque *caussae, cassus, divissiones* scripsisse." As to 'reprendit,' we have the evidence of the grammarians that it was written without the aspirate, as 'vementer' was written for 'vehementer.' But there is no doubt 'pre-hend-ere' is the complete form of this word. A little further on the Cod. has 'repraehendis solutionis.'

possitne] This must be translated 'whether, or, if our case cannot be made good in your opinion.'

ad diversam veteris] All that the Cod. shows is D . . . . . E in one line, and RISAERIS at the beginning of the next. Niebuhr supplied the defect, and what he has added just fills up the blank between the D and the E. The addition, '-torium conducta habebant,' says Niebuhr, is certain; and it is very probable. As to Aquiliense, he supposes it to be some 'portorium' established by M'. Aquilius; which is not a good conjecture. Mommsen supposes that the word should be 'Aquileiense,' the ethnic name of the town Aquileia.

2. *nummum*] 'Thus it is written in these fragments, but in the other orations the better MSS. of Cicero have *numum*' (Niebuhr).—'intertrimenti:' Vol. I. Verr. ii. 1. c. 50; and Terence, Heauton. iii. 1. 39:

"Nunc quum sine magno intertrimento non potest
Haberi, quidvis dare cupis."

in tabulis ulla hujus furti significatio, nullum in iis nominibus intertrimenti aut deminutionis vestigium reperietur. Atqui homines, si qui tenentur hoc genere quaestionis, accusatos et reprehensos videmus primum testibus, difficile est enim eum qui magistratui pecuniam dederit, non aut induci odio ut dicat, aut cogi religione; deinde si qua gratia testes deterrentur, tabulae quidem certe incorruptae atque integrae manent. Fac omnes amicissimos Fonteio fuisse; tantum hominum numerum ignotissimorum atque alienissimorum pepercisse hujus capiti, consuluisse famae; res ipsa tamen ac ratio litterarum, confectioque tabularum, habet hanc vim ut ex acceptis et datis quidquid fingatur aut surripiatur aut non constet appareat. Acceptas populo Romano pecunias omnes isti rettulerunt: si protinus aliis aeque magnas aut solverunt aut dederunt, ut quod acceptum populo Romano est, id expensum cuipiam sit, certe nihil potest esse detractum. Sin aliqui domum tulerunt, ex eoru.n arca, e ra * * *

III. Deorum hominumque fidem! testis non invenitur in du-

Atqui homines, . . . testibus,] The text of the Cod. is not quite certain. The word '*tenentur*' is added by Mommsen. Niebuhr reads: "Atqui omnes iei quos in hoc genere quaestionis accussatos et reprehensos videmus, premuntur testibus." But I prefer the reading of Mommsen.—'deterrentur:' Cod. 'deterentur.'

Acceptas . . . rettulerunt &c.] Cod. 'rettulerunt.' Cicero says that all these people acknowledged that they had received from the Populus Romanus, from the aerarium, what was due to them. It seems that he is speaking of the books of the creditors of the state who were paid by Fonteius. But the passage is difficult. He adds: "if they forthwith either paid to other persons or lent (advanced) other sums of the same amount, so that what was entered as received from the Roman people was (at the same time) entered as paid or advanced to another, certainly nothing can be taken away;" nothing can be suppressed; one amount checks the other. "But if any (Mommsen reads 'aliquid') took their money home, from their &c." Here the Cod. is defective. The reading is

TULERUNTEXEO
RUMARCAERA

out of which Mommsen makes "tulerunt ex eorum arca e *rationibus accepti et expensi*." Niebuhr leaves it as it is in the text. It is impossible to know what Cicero wrote.

Niebuhr thinks that this passage contains strong evidence that the Romans kept their books by double entry (Niebuhr, Life and Letters, ii. p. 99). The practice of mixing Latin notes and English seems to me not good; but sometimes a man's Latin note is best given in his own words. The reader may judge of it himself without having to trust the translator. Niebuhr says: "Magnam hic locus vim habet ad probandum id, quod dixi (in the note on the words 'post legem Valeriam') tabularum apud Romanos eandem fuisse indolem quam earum quas Italicas vocamus Germani. Fac enim illo modo institutas fuisse quo eae quas in Germania *nostrates tabulas* nuncupamus, jam minime verum erit quod hic ait Cicero. At in Italicis nihil cuiquam acceptum referri potest quod non alii expensum referatur; quae quidem propria earum vis est. Negotia enim ipsa haud secus quam homines nomina in iis sunt, tam in adversariis quam in codice: ut si quis a populo Romano opus redemtum habeat, opus illud in quaestoriis tabulis nomen erat, et quodcunque eo nomine solveretur, id illi quaestor expensum ferebat. Possumus igitur suspicari quid hoc loco intersit inter *solvere* et *dare*, modo eorum memores simus quae in hac re aut ipsi facimus aut ab aliis quotidie fieri videmus. Modo enim *solvitur*, quum de homine sermo est cui debetur, modo *datur*, negotio scilicet. Neque tamen contendam rejiciendam esse horum vocabulorum significationem consuetam," &c.

centis et triciens sestertio. Quam multorum hominum? Sexcentorum amplius. Quibus in terris gestum negotium est? illo, illo inquam, loco quem videtis. Extra ordinemne pecunia est data? immo vero nummus nullus sine litteris multis commotus est. Quae est igitur ista accusatio quae facilius possit Alpes quam paucos aerarii gradus ascendere; diligentius Rutenorum quam populi Romani defendat aerarium; lubentius ignotis quam notis utatur, alienigenis quam domesticis testibus; planius se confirmare crimen lubidine barbarorum quam nostrorum hominum litteris arbitretur! Duorum magistratuum, quorum uterque in pecunia maxima tractanda procurandaque versatus est, triumviratus et quaesturae ratio sic redditur, judices, ut in iis rebus, quae ante oculos gestae sunt, ad multos pertinuerunt, confectae publicis privatisque tabulis sunt, nulla significatio furti, nulla alicujus delicti suspicio referatur. Hispaniensis legatio consecuta est, turbulentissimo rei publicae tempore, quum adventu L. Sullae maximi exercitus in Italiam civium dissiderent judiciis ac legibus: atque hoc rei publicae statu desperato qualis * * *

3. *triciens*] This is the reading of the Cod.; and this termination of these numerals appears in the best MSS. of the orations (Niebuhr). The Cod. has also 'inveneitur.'

'Triciens sestertio,' in a matter of three millions of 'sesterces.' With such words as 'triciens' we must use the neuter 'sestertium' (see Vol. I. Verr. ii. 1. c. 39).—'Ducentis' must agree with something understood, so that it should mean 'ducentis millibus sestertiorum;' and the text is equivalent to 'bis et tricies,' as Niebuhr remarks. The symbol H. S. may at the same time represent 'sestertium,' the neuter singular, and 'sestertiorum' as in the Verr. ii. 1. c. 39: 'H. S. decies et octingenta millia.' In place of 'ducentis' Mommsen writes 'ducenties.'

sexcentorum amplius.] This merely means a large number. It is a common expression.

quem videtis.] In the 'forum' and the 'aerarium,' as Niebuhr says, who observes that it appears from this passage and others that Fonteius was 'quaestor' at Rome.

Extra ordinem] This might mean in some irregular way. Niebuhr supposes it to mean money which was not paid 'a mensa;' for the 'quaestor' used to pay from the 'mensa publica' (Pro Flacco, c. 19). He also refers to the Pro Cluentio, c. 31. See Vol. I. Verr. ii. 1. c. 39.

aerarii gradus] Niebuhr observes that the 'aerarium' was above the Forum, and it was reached by steps. The enormous excavations under the Capitoline hill belonged partly to the temple of Jupiter, partly to the Tabularium, and partly to the Aerarium; and thus, says Niebuhr, we understand Cicero when he writes 'cuniculos ad aerarium agere' (De Off. iii. 25).

Ruteni] As Fonteius is supposed to have been 'quaestor' at Rome, Niebuhr conjectures that he had to pay some money out of the Roman 'aerarium' to the Ruteni; which seems a very unlikely thing. He adds, unless this has reference to his praetorship in Gallia; which is much more probable.

Part of the Ruteni were included in the Gallia Provincia; and Caesar (B. G. vii. 7) calls them Ruteni Provinciales.

triumviratus] The Romans had many official personages, who were named Triumviri. If Cicero does not allude to Triumviri Coloniae deducendae, he may mean a 'triumviratus monetalis' (Introd.).

Hispaniensis] See c. 16, and Introd.

quum adventu . . . ac legibus:] So the text stands in the Cod. There is no sign of any thing being omitted; and yet something is wrong. Niebuhr has altered it thus: "cum adventu L. Sullae in Italiam maximi exercitus civium dissiderent *de* judiciis ac legibus." The insertion of *de* before 'judiciis' cannot be approved. Mommsen tries to mend the passage another way.

Fragmenta ab aliis scriptoribus servata.

(C. Julius Victor. VI. § 2.)

IV. Si nulla pecunia numerata est; cujus pecuniae quinquagesima est? * * * * * *

(*Aquila* c. 35. p. 178. ed. Ruhnk.)

Frumenti maximus numerus e Gallia, peditatus amplissimae copiae e Gallia, equites numero plurimi e Gallia.

(*Ammian. Marcell.* XV. c. 12.)

Gallos post haec dilutius esse poturos.

(*Quinctil.* VI. Instit. Or. 3, 51.)

Plaetorii matrem, dum vixisset, ludum; postquam mortua esset, magistros habuisse.

Pars orationis in codicibus vulgatis servata.

V. Hoc praetore oppressam esse aere alieno Galliam. A quibus versuras tantarum pecuniarum factas esse dicunt? A Gallis? Nihil minus. A quibus igitur? A civibus Romanis qui negotiantur in Gallia. Cur eorum verba non audimus, cur eorum tabulae nullae proferuntur? Insector ultro atque insto accusatori, judices: insector, inquam, et flagito testes. Plus ego in hac caussa laboris et operae consumo in poscendis testibus quam ceteri defensores in refutandis. Audaciter hoc dico, judices: non temere confirmo. Referta Gallia negotiatorum est,

The 'adventus' or arrival of L. Sulla in Italy was in B.C. 83; which fixes the time of Fonteius' legatio in Spain (Introd.).

4. There is a curious note on the fragments in the second edition of Orelli's Cicero. This oration is edited by Halm, who has the following note:—"Praeter haec fragmenta alia nova quadraginta fere versus complectentia latere dicuntur in codice aliquo, quem Theodorus Oehlerus Francofurtanus in coenobio quodam tractus Rhenani inferioris invenit, qua de re exposui in Schneidewini Philologo, iv. p. 373 seqq. Schedas defuncti frater ejus, qui olim rebus scholasticis in pago Aroviano (Kanton Aarau) praepositus erat, nunc Francofurti ad Moenum mercaturas facit, possidet thesaurumque draconis instar custodit expectans, opinor, dum aliquis veniat, qui singulos versus nummis aureis redimere velit. Unum tamen fragmentum innotuit, quod Theod. Oehlerus cum Baitero per literas communicaverat. Hoc, donec reliqua fragmenta vulgata erunt, praestare visum est hic in notis repetere: 'Exurgite quaeso viri optimi atque fortissimi, legati amplissimae atque honestissimae civitatis, resistite per deos immortales eorum perjuriis injuriisque, quorum saepe numero telis restitistis.'"

5. *versuras*] See Vol. I. Verr. ii. 2. c. 76.

negotiatorum] See Vol. I. Verr. Act. 1. c. 7. The 'negotiatores' are also described as 'qui negotiantur,' in this passage, and in an inscription (Arundell, Discoveries in Asia Minor, i. p. 192),

QVI : APAMEAE
NEGOTIANTVR.
H. C

We learn from this passage that the Gallia Provincia was already filled with the money-making Italians. Cicero enumerates the various classes of Italians who were in the Provincia, all of whom are mentioned in his Verrine orations as being in Sicily, except that here he omits the 'mercatores,' and in a passage of the Verrine orations (ii. 3. c. 6), he omits the 'negotiatores;' and the name 'coloni' does not occur there.

plena civium Romanorum. Nemo Gallorum sine cive Romano quidquam negotii gerit: nummus in Gallia nullus sine civium Romanorum tabulis commovetur. Videte quo descendam, judices, quam longe videar ab consuetudine mea et cautione ac diligentia discedere. Unae tabulae proferantur, in quibus vestigium sit aliquod quod significet pecuniam Fonteio datam; unum ex toto negotiatorum, colonorum, publicanorum, aratorum, pecuariorum numero testem producant; vere accusatum esse concedam. Pro dii immortales! quae haec est caussa, quae defensio? Provinciae Galliae M. Fonteius praefuit, quae constat ex iis generibus hominum et civitatum, qui, ut vetera mittam, partim nostra memoria bella cum populo Romano acerba ac diuturna gesserunt; partim modo ab nostris imperatoribus subacti, modo bello domiti, modo triumphis ac monumentis notati, modo ab senatu agris urbibusque mulctati sunt; partim qui cum ipso M. Fonteio ferrum ac manus contulerunt, multoque ejus sudore ac labore sub populi Romani imperium ditionemque ceciderunt. Est in eadem provincia Narbo Martius, colonia nostrorum civium, specula populi Romani ac propugnaculum, istis ipsis nationibus oppositum et objectum: est item urbs Massilia, de qua ante dixi, fortissimorum fidelissimorum-

But 'colonus' occurs elswhere (Verr. ii. 3. c. 22, and the note). This 'colonus' was a tenant, as we call a man who pays money or produce annually for the use of a farm.

triumphis &c.] The Romans entered Gallia in B.C. 154, to help the Massaliots against the Ligurians. Their first Gallic colony, Aquae Sextiae (Aix), was founded B.C. 122. In B.C. 121 Q. Fabius Maximus Allobrogicus defeated the Galli in a great battle near the junction of the Isara (Isère) and the Rhone. The Fornix Fabianus (Vol. I. Verr. Act. i. c. 7, note) was a 'monumentum' of his victory; and he had a triumph. Before the triumph of Fabius there was the triumph of M. Fulvius Flaccus B.C. 123 over the Ligures and the Vocontii: and that of C. Sextius Calvinus and Cn. Domitius Ahenobarbus, B.C. 122. And after the time of Fabius, there was the triumph of C. Marius and Q. Catulus, B.C. 101.

Narbo] Narbo (Narbonne) on the Atax (Aude) was a Roman colony, founded B.C. 118. The Codd. V. S. have 'Martius.' Narbo was on the road from Nemausus (*Nîmes*) into Spain, and an important position for the Romans. It is impossible to determine whether the name is Martius or Marcius, and a good deal has been written about it. V. S. have 'Martius.' There is an inscription 'Narbo Mart.,' and a coin of Goltzius with 'Mart.' on it. We know that the Roman terminations —*tius*, —*cius* were often used indifferently, so far as we can conclude from the MSS. It seems most likely that Narbo took its name 'Marcius' from the Roman consul (B.C. 118) Q. Marcius Rex, who destroyed the Stoeni, an Alpine people.

Massilia,] This old Phocaean colony, founded B.C. 600, had long been an ally of Rome (Justin, xlii. 5). It was on the coast in a rocky barren country, one of the least inviting for a settlement that can be imagined. There was a small port, which was the only thing that could have induced the Phocaeans to fix themselves here. In B.C. 154 the Massaliots were aided by the Romans against the Oxybii and Deceates, which brought the Romans and this Greek city into closer alliance. Again, when they were pressed by the Salluvii they called on the Romans to help them, and the consul Fulvius Flaccus defeated their enemies. The foundation of the Roman colony of Aquae Sextiae (Aix) in B.C. 122, brought the Romans still nearer to their Massaliot allies.

que sociorum, qui Gallicorum bellorum pericula populo Romano copiisque remis compensarunt; est praeterea numerus civium Romanorum atque hominum honestissimorum. VI. Huic provinciae, quae ex hac gentium varietate constaret, M. Fonteius, ut dixi, praefuit: qui erant hostes subegit; qui proximi fuerant, eos ex iis agris quibus erant mulctati decedere coegit; ceteris, qui idcirco magnis saepe erant bellis superati ut semper populo Romano parerent, magnos equitatus ad ea bella quae tum in toto orbe terrarum a populo Romano gerebantur, magnas pecunias ad eorum stipendium, maximum frumenti numerum ad Hispaniense bellum tolerandum imperavit. Is, haec qui gessit, in judicium vocatur: vos, qui in re non interfuistis, caussam una cum populo Romano cognoscitis. Dicunt contra quibus invitissimis imperatum est; dicunt qui ex agris ex Cn. Pompeii decreto decedere sunt coacti: dicunt qui ex bello, caede et fuga nunc primum audent contra M. Fonteium inermem consistere. Quid coloni Narbonenses, quid volunt, quid existimant? Hunc per vos volunt, se per hunc incolumes existimant esse. Quid Massiliensium civitas? Hunc praesentem iis affecit honoribus quos habuit amplissimos; vos autem absens orat atque obsecrat ut sua religio, laudatio, auctoritas, aliquid apud vestros animos momenti habuisse videatur. Quid civium Romanorum, quae voluntas est? Nemo est ex tanto numero quin hunc optime de provincia, de imperio, de sociis et civibus meritum esse arbitretur. VII. Quoniam igitur videtis qui oppugnatum M. Fonteium, cognostis qui defensum velint, statuite nunc quid vestra aequitas, quid populi Romani dignitas postulet; utrum colonis vestris, negotiatoribus vestris, amicissimis atque antiquissimis sociis, et credere et consulere malitis, an iis quibus neque propter iracundiam fidem neque propter infidelitatem honorem habere debetis. Quid si majorem hominum etiam honestissimorum copiam afferam, qui hujus virtuti atque innocentiae testimonio possint esse, tamenne plus

populo Romano] V. S. have P. R., out of which some editors have erroneously made 'praetori Romano.'—'copiisque remis' V. S.: which is certainly corrupt, but the defect is not cured by writing 'remis copiisque.'

6. *magnos equitatus*] The Galli were strong in cavalry. Caesar had no Roman cavalry in his Gallic campaigns. He employed the Galli, and sometimes the Germani.

Hispaniense bellum] The war with Sertorius in Spain commenced B.C. 80, and ended B.C. 72 with the death of Sertorius.

decreto] Cn. Pompeius punished the Volcae Arecomici and Helvii, both of whom were within the Provincia, and had opposed him in his march into Spain, as it seems, in B.C. 76. He gave their lands to Massilia (Caesar, B. C. i. 35). Many of the Volcae, we can hardly suppose all of them, were compelled to give up their lands to others.

7. *colonis vestris,*] Here he means the Roman settlers, the members of a 'colonia,' and chiefly those of Narbo, whom (c. 6) he calls 'coloni Narbonenses.'

Gallorum consensio valebit quam summae auctoritatis omnium? Quum Galliae Fonteius praeesset, scitis, judices, maximos populi Romani exercitus in duabus Hispaniis clarissimosque imperatores fuisse. Quam multi equites Romani, quam multi tribuni militum, quales et quot et quotiens legati ad eos. Exercitus praeterea Cn. Pompeii maximus atque ornatissimus hiemavit in Gallia, M. Fonteio imperante. Satisne vobis multos, satis idoneos testes et conscios videtur ipsa fortuna esse voluisse earum rerum quae M. Fonteio praetore gererentur in Gallia? Quem ex tanto hominum numero testem in hac caussa producere potestis? quis est ex eo numero qui vobis auctor placeat? eo nos jam laudatore et teste utemur. Dubitabitis etiam diutius, judices, quin illud, quod initio vobis proposui, verissimum sit, aliud per hoc judicium nihil agi nisi ut, M. Fonteio oppresso testimoniis eorum, quibus multa rei publicae caussa invitissimis imperata sunt, segniores posthac ad imperandum ceteri sint, quum videant eos oppugnare quibus * * * populi Romani imperium incolume esse non possit?

VIII. Objectum est etiam quaestum M. Fonteium ex viarum munitione fecisse, ut aut ne cogeret munire, aut id quod munitum esset ne improbaret. Si et coacti sunt munire omnes et multorum opera improbata sunt, certe utrumque falsum est, et ob vacationem pretium datum, quum immunis nemo fuerit, et ob probationem, quum multa improbata sint. Quid si hoc crimen optimis nominibus delegare possumus, et ita, non ut culpam in alios transferamus,

Hispaniis] The Romans at this time spoke of the Hispaniae in the plural number, the Citerior Hispania, afterwards Tarraconensis, and the Ulterior, afterwards Baetica (Livy, xxviii. 18; xxx. 30; xxxii. 28). The original boundary between the Hispaniae was the Iberus. When the Ulterior was divided into two parts, the Citerior was called Tarraconensis, and the two parts of the Ulterior were Baetica and Lusitania.

The war in Spain against Sertorius was still going on while Fonteius was 'praetor' of the Gallia Provincia. It was after sustaining a defeat from Sertorius that an army of Pompeius wintered in Gallia. Plutarch says (Sertorius, c. 21): "the generals opposed to him (Sertorius) were obliged to separate, one to march off into Gaul, and Pompeius to winter among the Vaccaei, in great distress for want of supplies, and to write to the Senate, that he would lead his army out of Iberia, if they did not send him money, for he had spent all his own in defence of Italy." The letter of Pompeius is in the third book of the Fragments of the Roman History of Sallustius.

oppugnare] 'Oppugnare V. Garat. teste: oppugnari' S.—'quibus' V. 'quibus oppressis' S. Some of the editors have printed 'oppressis' after 'quibus.' There appears to be something omitted after 'quibus,' the sense of which is what Mommsen has thus supplied: 'quibus imperata sint ea sine quibus Pop. Romani, &c.'

8. *munitione*] 'Munitio' and 'munire' are the words for 'road-making.' See Vol. I. Verr. ii. 3. c. 68.

nominibus delegare] 'We can transfer this charge about the road-making to men of the best character, and yet so as not to charge the offence upon others.' 'Delegare' is used to signify the transferring of a debt, as when a debtor 'delegat,' transfers to his creditor a debt that is due to him from another person. Accordingly Cicero uses 'nominibus.' Here, the charge, which is compared to a debt, is transferred to

sed uti doceamus eos isti munitioni praefuisse, qui facile officium suum et praestare et probare possunt, tamenne vos omnia in M. Fonteium iratis testibus freti conferetis? Quum majoribus rei publicae negotiis M. Fonteius impediretur, et quum ad rem publicam pertineret viam Domitiam muniri, legatis suis, primariis viris, C. Anio Bellieno et C. Fonteio negotium dedit. Itaque praefuerunt: imperaverunt pro dignitate sua quod visum est, et probaverunt. Quod vos, si nulla alia ex re, ex litteris quidem nostris quas exscripsistis, et missis et allatis, certe scire potuistis. Quas si antea non legistis, nunc ex nobis quid de iis rebus Fonteius ad legatos suos scripserit, quid ad eum illi rescripserint, cognoscite. L. M. AD C. ANNIUM LEG. AD C. FONTEIUM LEG. L. A. A C. ANNIO LEG. A C. FONTEIO LEG.

Satis opinor esse perspicuum, judices, hanc rationem munitionis neque ad M. Fonteium pertinere, et ab iis esse tractatam quos nemo possit reprehendere. IX. Cognoscite nunc de crimine vinario, quod illi invidiosissimum et maximum esse voluerunt. Crimen a Plaetorio, judices, ita constitutum est; M. Fonteio non in Gallia primum venisse in mentem ut portorium vini institueret, sed

debtors who are able to pay, or to give a good account of themselves. Compare Pro Domo, c. 7; Ad Div. viii. 1, 'quod hunc laborem alteri delegavi.' This Via Domitia was in the Gallia Provincia; it was probably the work of the Proconsul Cn. Domitius, who defeated the Allobroges at Vindalium, B.C. 122.

probaverunt.] 'They approved of the work:' they accepted it as properly done. The opposite word is 'improbare.' See Vol. I. Verr. ii. 1. c. 54, 'probatio futura est tua qui locas.' The inscriptions on the Pons Fabricius are:

L. FABRICIVS. C. F. CVR. VIAR. FACIVNDVM COERAVIT FIDEMQVE PROBAVIT, &c.

quas exscripsistis,] 'ex quas scripsistis' V. S.: the emendation was simple (Halm's note). He properly explains it by 'quas conscribendas curastis;' for Plaetorius had demanded a copy of them.

L. M.] That is 'Litterae missae,' &c.; and L. A., &c. 'Litterae allatae.' So he has just said 'missis et allatis.' Comp. Vol. I. Verr. ii. 3. c. 71.

9. *portorium vini*] This was a duty levied on wine in its transit through the Provincia. We see from this passage that Tolosa (Toulouse) in the basin of the Garonne was already within the limits of the Provincia. It is also mentioned by Caesar (B. G. i. 10; iii. 20) as one of the cities of the Provincia.

Mommsen has altered the passage as follows: 'exegisse, Segoduni Porcium et Munium ternos, Volcalone Servaeum binos et victoriatum, atque in his locis Segoduni et Volcalone ab iis portorium esse exactum, si qui Ebromago, qui vicus inter Tolosam et Narbonem est, &c. . . . . . vellent; Tolosae Oduluscantum, &c."

The passage is corrupted. Mommsen (Excursus at the end of Halm's edition of this oration, Orell. 2nd ed.) has some remarks to the following effect. This passage, he says, treats of the Portorium paid by those who imported wine into Gallia from Italy by sea; for Posidonius says (Athen. iv. p. 151 E), that besides the wine of Massilia, the Galli chiefly used Italian wine; and as Mommsen observes, Cicero alludes to this, when he says 'fructibus nostris.' He has not referred to a passage of Cicero (De Re Publica iii. 9) where it is said: "Nos vero justissimi homines qui transalpinas gentis oleam et vitem serere non sinimus, quo pluris sint nostra oliveta nostraeque vineae" (Ed. Mai, and his note).

Mommsen adds, that the vessels are meant which sailed to Narbo, which was at that time the only Roman port in Gallia Transalpina; and that no Portorium was exacted at Narbo or in the Ager Narbonensis, in order that the colonists who were Roman citizens might not be oppressed by the tax;

hac in Italia proposita ratione Roma profectum. Itaque Titurium Tolosae quaternos denarios in singulas vini amphoras portorii nomine exegisse, Croduni Porcium et Munium ternos victoriatos, et Vulchalone Servaeum binos victoriatos; atque in his locis ab his portorium esse exactum, si qui Cobiamacho, qui vicus inter

but that it was levied on the roads which led from Narbo into the Provincia Romana and to the people who were not within its limits. The chief place for paying the Portorium was Tolosa, near which city was the limit of the Roman Provincia, and from it the roads led into Hispania, Aquitania, Burdigala (Bordeaux), and to the country of the Cadurci, who were on the Oltis (Lot), a branch of the Garumna. Accordingly he concludes that no other place was so convenient for demanding a Portorium on wine exported to the stranger (ad hostem) as Tolosa. As the Codd. have the reading 'neque Tolosam ire vellentelosi or vellentelesi' (as he writes it), he concludes that the original was 'neque Tolosam ire vellent tolose;' and accordingly he corrects the text, as it is given above.

Some writers have supposed that 'elesi' may be a corruption of Elusa (Eause in the department of Gers), which was a town of the Elusates, in the middle of Aquitania. But Mommsen observes that we must first explain how a tax on wine exported to the stranger could be levied on foreign ground. Elusa is certainly not the true name. Nor can we suppose, he says, that Elusio (perhaps St. Pierre d'Elzonne) between Toulouse and Narbonne is the true name; for how could the custom-house officers there know whether the wine was going to the Provinciales or the stranger? But the objection is good for nothing.

Yet he adds that the custom-house at Tolosa would not be sufficient, since there was a deviation on the road between Narbo and Tolosa, at a place called Cobiamachum, or probably Cobiamagus; and there were roads from Cobiamachum to Secrodunum and Vulchalo. As to 'Secrodunum,' he says that the MSS. reading being 'exegisse Croduṇi' or 'Crodum,' the first syllable of 'Secrodunum' has been 'absorbed' by the preceding word 'exegisse.'

Walckenaer (Géog. Anc. des Gaules, i. 194) fixes Cobiamachum at a place called Cambiac, to the south of Caraman and Auriac, in the direction from Toulouse to Narbonne. Mommsen rejects this guess, which is founded on a resemblance of names; but the rest that he has to say against it is nothing. In place of Cobiamachus he would put Sostomagus, a place on the road from Narbonne to Toulouse, and between Carcassonne and Toulouse; or if we don't like that, we may write Hebromagus or Eburomagus, an unknown site, on the same road and also between Toulouse and Carcaso (Carcassone), and xiv. M. P. from Carcassone according to the Jerusalem Itinerary. These conjectures also are worth nothing.

Again having made a word 'Secrodunum,' Mommsen alters it to Segodunum (Rodez on the Aveyron), the chief town of the Ruteni. He admits that Segodunum is not considered by modern geographers as a town of the Ruteni Provinciales (see c. 3), but he adds that this opinion is only founded on a conjecture of D'Anville (Notice de l'ancienne Gaule, Ruteni) which is not very certain, and there seems, as he says, to be no objection to extending the Provincia Narbonensis as far as Segodunum. This is an easy way of settling a question by saying nothing at all. There are good reasons against supposing the Provincia to have extended as far north as the Aveyron, which reasons any man who has seen the country can easily understand. The utmost probable limit of the Ruteni Provinciales in a northern direction is the Tarn, for the communication between Toulouse and the places on the Tarn would be easy enough. We may place the Ruteni Provinciales on the Tarn and south of it, and the other Ruteni in the country north of the Tarn. The respective positions of the Ruteni and Ruteni Provinciales are not fixed by any ancient authority; but the position that I have assigned to them is consistent with all the ancient authorities, and the position which Mommsen without any reason chooses to assign to the Ruteni Provinciales is inconsistent with Caesar, and with the natural limits of the Provincia.

This note of Mommsen is instructive both for the good and the bad that it contains, which may be easily separated. It is usual with critics to make assumptions to suit some theory instead of taking facts as we know them, and making the fair deductions from them. He has no authority for saying that Roman wine was imported only to Narbonne.

Tolosam et Narbonem est, deverterentur neque Tolosam ire vellent: Elesioduluscantum senos denarios ab iis qui ad hostem portarent exegisse. Video, judices, esse crimen, et genere ipso magnum—vectigal enim esse impositum fructibus nostris dicitur, et pecuniam permagnam ista ratione cogi potuisse confiteor—et invidia; vel maxime enim inimici hanc rem sermonibus divulgare voluerunt. Sed ego ita existimo, quo majus crimen sit id quod ostendatur esse falsum, hoc majorem ab eo injuriam fieri qui id confingat. Vult enim magnitudine rei sic occupare animos eorum qui audiunt ut difficilis aditus veritati relinquatur.

De crimine vinario De bello Vocontiorum De dispositione hibernorum.

X. At hoc Galli negant.—At ratio rerum et vis argumentorum coarguit.—Potest igitur testibus judex non credere?—Cupidis et iratis et conjuratis et ab religione remotis non solum potest, sed etiam debet. Etenim si, quia Galli dicunt, idcirco M. Fonteius nocens existimandus est, quid mihi opus est sapiente judice, quid aequo quaesitore, quid oratore non stulto? Dicunt enim Galli: negare non possumus. Hic si ingeniosi et periti et aequi judicis has partes esse existimatis ut, quoniam quidem testes dicunt, sine ulla dubitatione credendum sit, Salus ipsa virorum fortium innocentiam tueri non potest; sin autem in rebus judicandis non minimam partem ad unam quamque rem existimandam momentoque suo ponderandam sapientiam judicis, videte ne multo vestrae majores gravioresque partes sunt ad cogitandum quam ad dicendum meae. Mihi enim semper una quaque de re testis non solum semel, verum

De crimine &c.] Here something is omitted. Pliny (Ep. i. 20) says: "ut contendat hos ipsos, quorum orationibus nitar, pauciora dixisse quam ediderint. Ego contra puto. Testes sunt multae multorum orationes, et Ciceronis pro Murena, pro Vareno: in quibus brevis et quasi nuda subscriptio quorundam criminum solis titulis indicatur. Ex his apparet illum permulta dixisse; quum ederet, omisisse." Cicero, as he says, wrote his 'orationes' after he spoke them (Tusc. iv. 25): "jam rebus transactis et praeteritis scribimus orationes." It is not a necessary conclusion that Cicero did not write his speeches before he delivered them. He studied them at least both as to the matter and the expression. But when he made them public, he wrote them out in such form as would make them best suited for reading. Cicero (Brutus, c. 96) mentions a speech of Hortensius for Messala which was written just as it was spoken; and this was not the usual thing.

10. *Cupidis*] See Vol. I. Verr. ii. 4. c. 56; and a little further on in this chapter, 'cupido auctoritas;' and in the next chapter, 'cupiditatis et inimicitiarum suspicio;' and in c. 149, 'cupidos moderatis.'

quaesitore,] See Vol. I. Verr. Act. i. c. 9, 10.

Salus] See Vol. I. Verr. ii. 3. c. 57.

testis non solum semel,] From this and other passages of Cicero we learn something of the Roman way of examining witnesses. He says that he must examine once only; but he is speaking of the examination of the witnesses of the other side, or of cross examination. Sometimes he would not examine at all; the prudence of doing which is well known to us. In his excellent treatise De Oratore (ii. 72), there are some good remarks on the conduct of a cause. Anto-

etiam breviter interrogandus, et saepe etiam non interrogandus; ne aut irato facultas ad dicendum data aut cupido auctoritas attributa esse videatur. Vos et saepius eamdem rem animis agitare et diutius uno de teste cogitare potestis; et, si quem nos interrogare noluimus, quae caussa nobis tacendi fuerit existimare debetis. Quamobrem si hoc judici praescriptum lege aut officio putatis, testibus credere, nihil est cur alius alio judice melior aut sapientior existimetur. Unum est enim et simplex aurium judicium, et promiscue et communiter stultis ac sapientibus ab natura datum. Quid est igitur ubi elucere possit prudentia, ubi discerni stultus auditor et credulus ab religioso et sapienti judice? Nimirum illud, in quo ea quae dicuntur a testibus conjecturae et cogitationi traduntur, quanta auctoritate, quanta animi aequitate, quanto pudore, quanta fide, quanta religione, quanto studio existimationis bonae, quanta cura, quanto timore dicantur. XI. An vero vos id in testimoniis hominum barbarorum dubitabitis, quod persaepe et nostra et patrum memoria sapientissimi judices de clarissimis nostrae civitatis viris dubitandum non putaverunt? qui Cn. et Q. Caepionibus, L. et Q. Metellis testibus in Q. Pompeium, hominem novum, non crediderunt: quorum virtuti, generi, rebus gestis fidem et auctoritatem in testimonio cupiditatis atque inimicitiarum suspicio derogavit. Ecquem hominem vidimus, ecquem vere commemorare possumus parem consilio, gravitate, constantia, ceteris virtutibus, honoris, ingenii, rerum gestarum ornamentis M. Aemilio Scauro fuisse? tamen hujus, cujus injurati nutu prope terrarum orbis regebatur, jurati testimonio neque in C. Fimbriam neque in C. Memmium creditum est. Noluerunt ii qui judicabant hanc patere inimicitiis viam, quem quisque odisset, ut eum testimonio posset tollere. Quantus in L. Crasso pudor fuerit, quod ingenium, quanta auctoritas, quis ignorat? Tamen is, cujus etiam sermo testimonii auctoritatem habebat, testimonio ipso quae in M. Marcellum inimico animo dixit probare non potuit. Fuit, fuit illis judicibus divinum ac singulare, judices, consilium, qui se non solum de reo,

nius says: "non tam ut prosim caussis elaborare soleo quam ut ne quid obsim: non quin enitendum sit in utroque, sed tamen multo est turpius oratori nocuisse videri caussae quam non profuisse." In ii. 74 there are some good remarks on the examination of witnesses.

11. *Q. Pompeium,*] Q. Pompeius was charged with Repetundae, B.C. 138, and acquitted. Comp. Valer. Maxim. viii. 5, 'De Testimoniis irritis vel ratis;' who has used this passage of Cicero.

M. Aemilio Scauro] C. Flavius Fimbria was charged with Repetundae, B.C. 106, and C. Memmius, B.C. 103. Both of them were acquitted (Brutus, c. 34, 45), though Scaurus gave evidence against them.

L. Crasso] See the passage of Valer. Maxim. quoted above.

sed etiam de accusatore, de teste judicare arbitrabantur, quid fictum, quid fortuna ac tempore allatum, quid pretio corruptum, quid spe aut metu depravatum, quid a cupiditate aliqua aut inimicitiis profectum videretur. Quae si judex non amplectetur omnia consilio, non animo ac mente circumspiciet; si, ut quidque ex illo loco dicetur, ex oraculo aliquo dici arbitrabitur; profecto satis erit, id quod dixi antea, non surdum judicem huic muneri atque officio praeesse. Nihil erit quamobrem ille nescio quis sapiens homo ac multarum rerum peritus ad res judicandas requiratur. XII. An vero illi equites Romani, quos nos vidimus, qui nuper in re publica judiciisque maximis floruerunt, habuerunt tantum animi, tantum roboris, ut M. Scauro testi non crederent; vos Volcarum atque Allobrogum testimoniis non credere timetis? Si inimico testi credi non oportuit, inimicior Marcello Crassus, aut Fimbriae Scaurus ex civilibus studiis atque obtrectatione domestica quam huic Galli? quorum qui optima in caussa sunt equites, frumentum, pecuniam semel atque iterum, ac saepius invitissimi, dare coacti sunt; ceteri, partim ex veteribus bellis agro mulctati, partim ab hoc ipso bello superati et oppressi. Si qui ob aliquod emolumentum suum cupidius aliquid dicere videntur, iis credi non convenit, credo majus emolumentum Caepionibus et Metellis propositum fuisse ex Q. Pompeii damnatione, quum studiorum suorum obtrectatorem sustulissent, quam cunctae Galliae ex M. Fonteii calamitate, in

12. *qui nuper*] The 'equites' were the 'judices' before the changes which were made by Sulla. When Cicero delivered his Verrine orations, the Senatores were the 'judices,' but the Lex Aurelia was enacted 70, by which a change was again made, and the 'judices' were chosen from the Senatores, Equites, and Tribuni Aerarii.

Volcarum &c.] The Allobroges occupied the north-east part of the Provincia between the Isara and the Rhone. Their furthest town was Geneva (Caesar, B. G. i. 6). The Vocontii were their neighbours on the south. The Allobroges joined Hannibal in his Italian invasion, B.C. 218 (Livy, xxi. 31).

The Volcae were a nation in the west and the south-west of the Provincia. The Volcae Tectosages had Tolosa. The rest of the Provincia eastward as far as the Rhone was occupied by the Volcae Arecomici. The Cevenna (Cévennes) separated the Arecomici on the west and north-west from the Ruteni and the Gabali. We do not know how far the territory of the Arecomici extended west from the Rhone, nor how far that of the Tectosages extended eastward from Toulouse. Probably, as D'Anville supposes, the boundaries between the two Volcae were different at different times. Nemausus (Nîmes), which lies in a pleasant country, was the chief town of the Arecomici.

optima in caussa] This is a Roman expression, the precise meaning of which can only be fixed by the context. Those who had only been required to furnish cavalry and corn, are opposed to those who had received harder treatment. They were therefore in a better condition and had less reason to revenge themselves. So he says (Pro Caecina, c. 33), 'qui in eadem caussa sunt,' 'those whose case or condition is the same.'

partim] This word is used by the Roman writers without regard to grammatical propriety to signify, 'some' or 'a part,' as in Caesar, B. G. ii. 1, 'partim qui .... studebant;' and in Vatin. c. 7, 'ex quibus partim tecum sentiebant.' See Gellius, x. 13.

qua illa provincia prope suam immunitatem ac libertatem positam esse arbitratur.

An si homines ipsos spectare convenit, id quod in teste profecto valere plurimum debet, non modo cum summis civitatis nostrae viris, sed cum infimo cive Romano quisquam amplissimus Galliae comparandus est? Scit Indutiomarus quid sit testimonium dicere? movetur eo timore quo nostrum unus quisque, quum in eum locum productus est? XIII. Recordamini, judices, quanto opere laborare soleatis non modo quid dicatis pro testimonio, sed etiam quibus verbis utamini, ne quod minus moderate positum, ne quod ab aliqua cupiditate prolapsum verbum esse videatur: vultu denique laboratis ne qua significari possit suspicio cupiditatis; ut et quum proditis, existimatio sit quaedam tacita de vobis pudoris ac religionis, et quum disceditis, ea diligenter conservata ac retenta videatur. Credo haec eadem Indutiomarum in testimonio timuisse aut cogitavisse; qui primum illud verbum consideratissimum nostrae consuetudinis, ARBITROR, quo nos etiam tunc utimur quum ea dicimus jurati, quae comperta habemus, quae ipsi vidimus, ex toto testimonio suo sustulit atque omnia se scire dixit. Verebatur enim videlicet ne quid apud vos populumque Romanum de existimatione sua deperderet, ne qua fama consequeretur ejusmodi, Indutiomarum, talem virum, tam cupide, tam temere dixisse. Non intelligebat se in testimonio nihil praeter vocem et os et audaciam neque civibus suis neque accusatoribus nostris praestare debere. An vero istas nationes religione jurisjurandi ac metu deorum immortalium in testimoniis dicendis commoveri arbitramini, quae tantum a ceterarum gentium more ac natura dissentiunt? quod ceterae pro religionibus suis bella suscipiunt, istae contra omnium religiones: illae in bellis gerendis ab diis immortalibus pacem ac veniam petunt, istae cum ipsis diis immortalibus bella gesserunt. XIV. Hae sunt nationes, quae quondam tam longe ab suis sedibus Delphos usque

Indutiomarus] He is called (c. 21) 'dux Allobrogum ceterorumque Gallorum.' The name occurs in Caesar (B. G. v. 3). Caesar's Indutiomarus was a Trevir.

13. *arbitror.*] See the note on 'videri,' Vol. I. Verr. ii. 2. c. 38; Pro Caecina, c. 25.

quod ceterae] Halm warns us against preferring 'Quum' to 'Quod.' 'Quod' is the relative, governed by 'suscipiunt,' as the phrase is, and 'bella' merely explains the 'Quod.'

14. *Delphos*] The Galli have been the greatest marauders known to history. Europe, Asia, and Africa have been visited from time immemorial by this warlike race. The attack on Delphi was made by Brennus and his Galli about B.C. 279. The story is told by Pausanias (x. 22) and by Justin (xxiv. 8).

The capture of Rome by the Italian Galli (B.C. 390) is one of the memorable events in the early history of the Romans (Liv. v. 33, &c.). Cicero speaks like a Roman of the character of a people who were the most formidable enemies that the Romans ever encountered. The Galli certainly set

ad Apollinem Pythium atque ad oraculum orbis terrae vexandum ac spoliandum profectae sunt. Ab iisdem gentibus sanctis et in testimonio religiosis obsessum Capitolium est atque ille Jupiter, cujus nomine majores nostri vinctam testimoniorum fidem esse voluerunt. Postremo his quidquam sanctum ac religiosum videri potest, qui, etiam si quando aliquo metu adducti deos placandos esse arbitrantur, humanis hostiis eorum aras ac templa funestant, ut ne religionem quidem colere possint, nisi eam ipsam prius scelere violarint? Quis enim ignorat eos usque ad hanc diem retinere illam immanem ac barbaram consuetudinem hominum immolandorum? Quamobrem, quali fide, quali pietate existimatis esse eos qui etiam deos immortales arbitrentur hominum scelere et sanguine facillime posse placari? Cum his vos testibus vestram religionem conjungetis? ab his quidquam sancte aut moderate dictum putabitis? Hoc vestrae mentes tam castae, tam integrae sibi suscipient, ut, quum omnes legati nostri qui illo triennio in Galliam venerunt, omnes equites Romani qui in illa provincia fuerunt, omnes negotiatores ejus provinciae, denique omnes in Gallia qui sunt socii populi Romani atque amici, M. Fonteium incolumem esse cupiant, jurati privatim et publice laudent, vos tamen cum Gallis jurare malitis? Quid ut secuti esse videamini? Voluntatemne hominum? Gravior igitur vobis erit hostium voluntas quam civium? An dignitatem testium? Potestis igitur ignotos notis, iniquos aequis, alienigenas domesticis, cupidos moderatis, mercenarios gratuitis, impios religiosis, inimicissimos huic imperio ac nomini bonis ac fidelibus et sociis et civibus anteferre?

little value on human life; and they were superstitious and cruel. Human sacrifices were common (Caesar, B. G. vi. 16; Lucan, Pharsalia, i. 444). But the Romans themselves were sometimes guilty of the same barbarity; and Cicero could not be ignorant of it. Pliny (N. H. xxx. 1) says: "DCLVII demum anno urbis Cn. Cornelio Lentulo P. Licinio Crasso Coss. Senatusconsultum factum est ne homo immolaretur: palamque fuit in tempus illud sacri prodigiosi celebratio." Again he says (xxviii. 2): "Boario vero in foro Graecum Graecamque defossos aut aliarum gentium cum quibus tum res esset etiam nostra aetas vidit;" even under the emperors. Plutarch (Quaest. Rom. p. 283) says the same; and Livy (xxii. 57): "interim ex fatalibus libris sacrificia aliquot extraordinaria facta, inter quae Gallus et Galla, Graecus et Graeca, in foro boario sub terra vivi demissi sunt in locum saxo conseptum; ibi ante hostiis humanis minime Romano sacro imbutum. Placatis satis, ut rebantur, deis, &c." This horrible superstition was a disgrace to the Roman character, but Rome has always been the head quarters of superstition and cruelty. The same chapter of Livy records the usual punishment of a vestal who had been unchaste: she was buried alive at the Colline gate. Cicero's declamation against the Galli is not only unjust, but one cannot see why the Judices must not have thought it absurd too; which is worse in an advocate. See Lactant. i. 21, De falsa religione.

gratuitis,] This word is explained by the word to which it is opposed. 'Mercenarius' is one who does a thing for hire (merces). "Quid, liberalitas gratuitane est an mercenaria? Si sine praemio benignus est, gratuita: si cum mercede, conducta." (Cicero, De Legg. i. 18.)

XV. An vero dubitatis, judices, quin insitas inimicitias istae gentes omnes et habeant et gerant cum populi Romani nomine? Sic existimatis eos hic sagatos bracatosque versari animo demisso atque humili, ut solent ii qui affecti injuriis ad opem judicum supplices inferioresque confugiunt? Nihil vero minus. Hi contra vagantur laeti atque erecti passim toto foro cum quibusdam minis et barbaro atque immani terrore verborum; quod ego profecto non crederem, nisi aliquoties ex ipsis accusatoribus vobiscum simul, judices, audissem quum praeciperent ut caveretis ne hoc absoluto novum aliquod bellum Gallicum concitaretur. Si M. Fonteium, judices, in caussa deficerent omnia: si turpi adolescentia, vita infami, magistratibus quos ante oculos vestros gessit convictis virorum bonorum testimoniis, legationibus flagitiose obitis, invisus suis omnibus, in judicium vocaretur; si in eo judicio colonorum populi Romani Narbonensium, fidelissimorum sociorum Massiliensium, civium Romanorum omnium testimoniis tabulisque premeretur; tamen esset vobis magno opere providendum ne, quos ita afflictos a vestris patribus majoribusque accepissetis ut contemnendi essent, eos pertimuisse et eorum minis et terrore commoti esse videremini. Nunc vero quum laedat nemo bonus, laudent omnes vestri cives atque socii; oppugnent ii qui saepissime hanc urbem et hoc imperium oppugnarunt; quumque inimici M. Fonteii vobis ac populo Romano minentur, amici ac propinqui supplicent vobis; dubitabitis non modo vestris civibus, qui maxime gloria ac laude ducuntur, verum etiam exteris nationibus ac gentibus ostendere, vos in sententiis ferendis civi parcere quam hosti cedere maluisse? XVI. Magna mehercules caussa, judices, absolutionis cum ceteris caussis haec est, ne qua insignis huic imperio macula atque ignominia suscipiatur, si hoc ita perlatum erit in Galliam, senatum equitesque populi Romani non testimoniis Gallorum, sed minis commotos, rem ad illorum libidinem judicasse. Ita vero, si illi bellum facere conabuntur, excitandus nobis erit ab inferis C. Marius, qui Indutiomaro

15. *sagatos bracatosque*] The 'sagum' was the Roman soldier's cloak, but Cicero represents the Galli as wearing it, or a cloak of some kind. 'Braccae' or breeches were worn by the Galli and by other nations. But the word is probably Celtic, and we still have it. The Romans once called the south part of Gallia by the name Bracata or Braccata, because the natives wore the 'bracae.' This was afterwards the Provincia.

convictis] 'convictis' V. 'coniunctus' S. 'convictus, Lamb. Orelli cum ed. Veneta, 1483' (Halm). 'Convictus' and 'conjunctus' are sometimes confounded in the MSS. (See Vol. I. Verr. Act. 1. c. 4.) The reading 'convictus' is manifestly false, for Cicero intends to say something of the 'magistratus,' which shall correspond to 'turpi adolescentia, vita infami.'

16. *C. Marius*,] He who was seven times consul, who defeated the Teutones

isti minaci atque arroganti par in belligerendo esse possit; excitandus Cn. Domitius et Q. Maximus, qui nationem Allobrogum et reliquas suis iterum armis conficiat atque opprimat: aut, quoniam id quidem non potest, orandus erit nobis amicus meus, M. Plaetorius, ut suos novos clientes a bello faciendo deterreat, ut eorum iratos animos atque horribiles impetus deprecetur: aut, si non poterit, M. Fabium subscriptorem ejus rogabimus ut Allobrogum animos mitiget, quoniam apud illos Fabiorum nomen est amplissimum. Volunt isti aut quiescere, id quod victi ac subacti solent, aut, quum minantur, intelligere se populo Romano non metum belli, sed spem triumphi ostendere.

Quod si in turpi reo patiendum non esset, ut quidquam isti se minis profecisse arbitrarentur, quid faciendum vobis in M. Fonteio arbitramini? de quo homine, judices, (jam enim mihi videor hoc prope caussa duabus actionibus perorata debere dicere,) de quo vos homine ne ab inimicis quidem ullum fictum probrosum non modo crimen sed ne maledictum quidem audistis. Ecquis umquam reus, praesertim in hac vitae ratione versatus, in honoribus petendis, in potestatibus, in imperiis gerendis, sic accusatus est ut nullum probrum, nullum facinus, nulla turpitudo, quae a libidine, aut a petulantia, aut ab audacia nata esset, ab accusatore objiceretur, si non vera, at tamen ficta cum aliqua ratione ac suspicione?

XVII. M. Aemilium Scaurum, summum nostrae civitatis virum,

and Cimbri near Aquae Sestiae (Aix) in B.C. 102; and in North Italy the year after.—'belligerendo,' V. 'belligerando,' S.

Cn. Domitius, &c.] See c. 8. The Allobroges were defeated by Cn. Domitius B.C. 122, and by Q. Fabius Maximus (B.C. 121), who got from his victory the title of Allobrogicus.

subscriptorem] See Vol. I. Divin. c. 15.

duabus actionibus] This was then the second 'actio.' There had been a 'comperendinatio' as in the case of Verres (Vol. I. Verr. ii. 1. c. 9): "Adimo enim comperendinationem. Quod habet lex in se molestissimum, bis ut caussa dicatur," &c. In the oration Pro Caecina (c. 33), he speaks of another case that was twice heard: "decemviri prima actione non judicaverunt, postea re quaesita et deliberata," &c.

potestatibus,] Mommsen supposes that 'obtinendis' or some such word has been omitted.—'at tamen:' 'at commode,' Halm.

17. *Scaurus*,] He was prosecuted, it is said, by M. Brutus on a charge of Repetundae B.C. 91 (Rein, Das Criminalrecht der Römer; and Charisius, p. 74, 124, and Diomedes, p. 398, cited by Meyer, Orat. Roman. Frag.).

M'. Aquilius the elder was prosecuted for Repetundae by P. Lentulus (Cicero, Vol. I. Divin. c. 2).

L. Aurelius Cotta was charged with the offence of Repetundae (B.C. 131). See Vol. I. Divin. c. 21.

P. Rutilius Rufus was the 'legatus' of the Praetor Q. Mucius Scaevola, Pontifex Max. in the province of Asia. Like the governor he attempted to protect the provincials against the oppression of the Publicani, who paid him off by causing him to be prosecuted for Repetundae (B.C. 92); and as the Equites, to which order the Publicani belonged, were at that time the Judices, they succeeded in getting a verdict against Rutilius (Liv. Epit. 70). Rutilius defended himself (Cic. De Or. i. 53; Brutus, c. 30). Cicero says that he was innocent; and if this is true, his condemnation was a more scandalous act than the acquittals of the guilty, which were common in those times. Rufus retired to Asia, where Cicero saw him at Smyrna (B.C. 78) during

scimus accusatum a M. Bruto. Exstant orationes, ex quibus intelligi potest multa in illum ipsum Scaurum esse dicta; falso: quis negat? verumtamen ab inimico dicta et objecta. Quam multa M'. Aquillius audivit in suo judicio? quam multa L. Cotta? denique P. Rutilius; qui etsi damnatus est, mihi videtur tamen inter viros optimos atque innocentissimos esse numerandus. Ille igitur ipse homo sanctissimus ac temperantissimus multa audivit in sua caussa, quae ad suspicionem stuprorum, ad libidinem pertinerent. Exstat oratio hominis, ut opinio mea fert, nostrorum hominum longe ingeniosissimi atque eloquentissimi, C. Gracchi; qua in oratione permulta in L. Pisonem turpia ac flagitiosa dicuntur. At in quem virum—qui tanta virtute atque integritate fuit ut etiam illis optimis temporibus, quum hominem invenire nequam neminem posses, solus tamen Frugi nominaretur. Quem quum in contionem Gracchus vocari juberet, et viator quaereret quem Pisonem, quod erant plures: *cogis me*, inquit, *dicere inimicum meum Frugi*. Is igitur vir, quem ne inimicus quidem satis in appellando significare poterat, nisi ante laudasset; qui uno cognomine declarabatur non modo quis esset, sed etiam qualis esset; tamen in falsam atque iniquam probrorum insimulationem vocabatur. M. Fonteius ita duabus actionibus accusatus est ut objectum nihil sit, quo significari vestigium libidinis, petulantiae, crudelitatis, audaciae possit. Non modo nullum facinus hujus protulerunt, sed ne dictum quidem aliquod reprehenderunt. XVIII. Quod si aut quantam voluntatem habent ad hunc opprimendum, aut quantam ad maledicendum licentiam, tantum haberent aut ad ementiendum animi, aut ad fingendum ingenii, non meliore fortuna ad probra non audienda Fonteius quam illi, de quibus antea commemoravi, fuisset. Frugi igitur hominem, judices, frugi, inquam, et in omnibus vitae partibus moderatum ac temperantem, plenum pudoris, plenum officii, plenum religionis, videtis positum in vestra fide ac potestate; atque ita ut commissus sit fidei, permissus potestati.

his eastern tour, and before this speech was delivered.

C. Gracchi;] Cicero often mentions the great oratorical powers of C. Sempronius Gracchus. The few fragments of his speeches which have been preserved make us regret the loss of the whole. They are unequalled for energy (Meyer, Orat. Rom. Frag. p. 224, 2nd ed.). L. Piso is L. Calpurnius Piso Frugi, who opposed a Lex of C. Sempronius Gracchus. Cicero (Tuscul. iii. 20) speaks again of Piso opposing the Lex Frumentaria; and he says: "C. Gracchus cum largitiones maximas fecisset et effudisset aerarium, verbis tamen defendebat aerarium." When the Lex was passed, Piso, though a Consularis, came to receive his allowance of corn which the Lex gave him; and on Gracchus asking how it was consistent for him who opposed the Lex to come for his allowance of corn, Piso said, that he did not like Gracchus' distributing his property without applying for a share.

At in quem virum] See Vol. I. ii. 2. c. 45.

Videte igitur utrum sit aequius, hominem honestissimum, virum fortissimum, civem optimum dedi inimicissimis atque immanissimis nationibus, an reddi amicis; praesertim quum tot res sint quae vestris animis pro hujus innocentis salute supplicent: primum generis antiquitas, quam Tusculo ex clarissimo municipio profectam, in monumentis rerum gestarum incisam ac notatam videmus: tum autem continuae praeturae, quae et ceteris ornamentis et existimatione innocentiae maxime floruerunt: deinde recens memoria parentis, cujus sanguine non solum Asculanorum manus a qua interfectus est, sed totum illud sociale bellum macula sceleris imbutum est: postremo ipse, quum in omnibus vitae partibus honestus atque integer, tum in re militari cum summi consilii et maximi animi, tum vero usu quoque bellorum gerendorum in primis eorum hominum qui nunc sunt exercitatus. XIX. Quare si etiam monendi estis a me, judices, quod non estis, videor hoc leviter pro mea auctoritate vobis praecipere posse ut ex eo genere homines, quorum cognita virtus, industria, felicitas in re militari sit, diligenter vobis retinendos existimetis. Fuit enim major talium virorum in hac re publica copia; quae quum esset, tamen eorum non modo saluti sed etiam honori consulebatur. Quid nunc vobis faciendum est, studiis militaribus apud juventutem obsoletis; hominibus autem ac summis ducibus partim aetate, partim civitatis discordiis ac rei publicae calamitate consumptis; quum tot bella aut a nobis necessario suscipiantur, aut subito atque improvisa nascantur; nonne et hominem ipsum ad dubia rei publicae tempora reservandum, et ceteros studio laudis ac virtutis inflammandos putatis?

18. *commissus—permissus*] "Entrusted to their integrity, submitted to their power." Livy (xxiii. 3) expresses this in another way: "ut supplicii sumendi vobis ex improbo ac detestabili senatu potestas esset."

Tusculo] Tusculum (near the site of Frascati), on an eminence connected with the Alban mountains, was an old Latin town. The second Tarquinius gave his daughter in marriage to Octavius Mamilius of Tusculum (Livy i. 49). It was now Roman, and the people were Roman citizens; but Cicero calls it a Municipium in respect of its earlier relations with Rome. In the oration Pro Plancio, c. 8, he again speaks of this very ancient Municipium of Tusculum, from which came more consular families than from all the other Municipia. Cato the Censor, Ti. Coruncanius, and the Fulvii were from Tusculum. (See the note on the oration Pro Cn. Plancio, c. 8.) The Fonteii, we are here told, were also from Tusculum, and the name was recorded on the monumental inscriptions of Rome (incisam ac notatam). The 'continuae praeturae' are the series of praetors elected from the Fonteii.

Asculanorum] This is the Asculum of Picenum, on the Truentus (Tronto). The Social war began in this town by the people massacring the proconsul Q. Servilius Caepio, with Fonteius his legatus, and all the Roman citizens in the place, and making plunder of their property (Appian, B. C. i. 38).

19. *hominibus autem ac*] Most of the commentators suppose that the adjective which belonged to 'hominibus' has been omitted. I see no reason for thinking so. He has just said 'ex eo genere homines quorum &c.;' and he now says 'hominibus autem ac summis ducibus.'

Recordamini quos legatos nuper in bello L. Julius, quos P. Rutilius, quos L. Cato, quos Cn. Pompeius habuerit. Scietis fuisse tum M. Cornutum, L. Cinnam, L. Sullam, praetorios homines, belli gerendi peritissimos: praeterea C. Marium, P. Didium, Q. Catulum, P. Crassum, non litteris homines ad rei militaris scientiam, sed rebus gestis ac victoriis eruditos. Age vero nunc, inserite oculos in curiam, introspicite penitus in omnes rei publicae partes: utrum videtis nihil posse accidere ut tales viri desiderandi sint, an si acciderit eorum hominum copia populum Romanum abundare? Quae si diligenter attendetis, profecto, judices, virum ad labores belli impigrum, ad pericula fortem, ad usum ac disciplinam peritum, ad consilia prudentem, ad casum fortunamque felicem domi vobis ac liberis vestris retinere quam inimicissimis populi Romani nationibus et crudelissimis tradere et condemnare malitis.

XX. At infestis prope signis inferuntur Galli in Fonteium, et instant atque urgent summo cum studio, summa cum audacia. Video, judices, sed multis et firmis praesidiis, vobis adjutoribus, isti immani atque intolerandae barbariae resistemus. Primum objicitur contra istorum impetus Macedonia, fidelis et amica populo Romano provincia; quae quum se ac suas urbes non solum consilio, sed etiam manu Fonteii conservatam esse dicat, ut illa per hunc a Thracum adventu ac depopulatione defensa est, sic ab hujus nunc capite Gallorum impetus terroresque depellit. Constituitur ex

L. Julius,] L. Julius Caesar consul B.C. 90, with P. Rutilius Lupus, the year in which the Social war commenced. Rutilius lost his life in the war; and Caesar, who also commanded the Roman troops, was not always successful. He proposed the Lex Julia de Civitate, the object of which was to break the confederation against Rome by granting the Roman citizenship to those states which were willing to accept it. Caesar's command was continued in the following year B.C. 89.

L. Porcius Cato was consul B.C. 89, with Cn. Pompeius Strabo, both of whom were employed in the Social war. This Pompeius was the father of Pompeius Magnus.

Cicero speaks of M. Cornutus and the rest, whom he names as 'legati' in the Social war, his design being to show what distinguished men were employed under the consuls of B.C. 90 and 89. C. Marius, though he had been consul six times, served in the Social war under P. Rutilius, and after the death of Rutilius he defeated the Marsi. L. Sulla also, afterwards the Dictator, served in this war as the 'legatus' of L. Caesar in B.C. 90; and in the next year he was the 'legatus' of L. Cato. In the following year, B.C. 88, he was elected consul with Q. Pompeius Rufus. Cicero first mentions the 'legati' who had been 'praetors.' All the rest had been consuls. Didius fell in the Social war B.C. 89. Appian (B. C. i. 40) enumerates the 'legati' of L. Caesar and Rutilius Lupus, but he incorrectly gives the name Sextus to L. Caesar. Q. Catulus was the colleague of C. Marius in the consulship B.C. 102. P. Licinius Crassus, consul B.C. 97, was the 'legatus' of L. Caesar, B.C. 90, in the Social war. See Machiavelli, Discorsi, &c. i. c. 36.

inserite] 'inserite,' V.: 'inferte,' S.

Quae . . . attendetis,] See Vol. I. Verr. ii. 3. c. 5. — 'condemnare:' 'condonare,' Faern. Halm.

20. *Macedonia,*] See the Introduction. — 'Thracum:' 'Thraecum,' Halm.—'his terris:' in Gallia. The Greeks of Massilia, he says, consider themselves as enemies of the Galli and the Ligures, and the friends of the Romans,

altera parte ulterior Hispania, quae profecto non modo religione suà resistere istorum cupiditati potest, sed etiam sceleratorum hominum perjuria testimoniis ac laudationibus suis refutare. Atque ex ipsa etiam Gallia fidelissima et gravissima auxilia sumuntur. Venit huic subsidio, misero atque innocenti, Massiliensium cuncta civitas; quae non solum ob eam caussam laborat ut huic, a quo ipsa servata est, parem gratiam referre videatur, sed etiam, quod ea conditione atque eo fato se in his terris collocatam esse arbitratur, ne quid nostris hominibus illae gentes nocere possint. Propugnat pariter pro salute M. Fonteii Narbonensis colonia, quae per hunc ipsa nuper obsidione hostium liberata, nunc ejusdem miseriis ac periculis commovetur. Denique, ut oportet bello Gallico, ut majorum jura moresque praescribunt, nemo est civis Romanus qui sibi ulla excusatione utendum putet. Omnes illius provinciae publicani, agricolae, pecuarii, ceteri negotiatores, uno animo M. Fonteium atque una voce defendunt. XXI. Quos si tantas auxiliorum nostrorum copias Indutiomarus ipse despexerit, dux Allobrogum ceterorumque Gallorum; num etiam de matris hunc complexu, lectissimae miserrimaeque feminae vobis inspectantibus avellet atque abstrahet? praesertim quum virgo Vestalis ex altera parte germanum fratrem complexa teneat, vestramque, judices, ac populi Romani fidem imploret; quae pro vobis liberisque vestris tot annos in diis immortalibus placandis occupata est ut ea nunc pro salute sua fratrisque sui animos vestros placare possit. Cui miserae quod praesidium, quod solatium reliquum est hoc amisso? Nam ceterae feminae gignere ipsae sibi praesidia, et habere domi fortunarum omnium socium participemque possunt; huic vero virgini quid est praeter fratrem quod aut jucundum aut carum esse possit? Nolite pati, judices, aras deorum immortalium Vestaeque matris quotidianis virginis lamentationibus de vestro judicio commoneri. Prospicite ne ille ignis aeternus, nocturnis Fonteiae laboribus vigiliisque servatus, sacerdotis vestrae lacrimis exstinctus esse dicatur. Tendit ad vos virgo Vestalis manus supplices,

bello Gallico,] A Gallic war was always the signal at Rome for a general arming.

21. *Quos si*] This is the reading of V. S.; and I believe that it is the true reading. The editions have 'quod si.' It is true that the Romans may have sometimes written 'quossi' for 'quod si,' as in Pro Tullio, § 49. But 'quos' refers to the persons enumerated in the preceding sentence; and 'tantas . . . copias' explains 'quos.' Comp. Vol. I. Verr. ii. 2. c. 26: "Quod ego nisi meo adventu illius conatus, &c."

ille ignis aeternus,]

"Esse diu stultus Vestae simulacra putavi:
Mox didici curvo nulla subesse tholo.
Ignis inexstinctus templo celatur in illo;
Effigiem nullam Vesta nec ignis habent."
(Ovid, Fasti, vi. 295.)

easdem quas pro vobis diis immortalibus tendere consuevit; cavete ne periculosum superbumque sit ejus vos obsecrationem repudiare, cujus preces si dii aspernarentur, haec salva esse non possent. Videtisne subito, judices, virum fortissimum, M. Fonteium, parentis et sororis commemoratione lacrimas profudisse? Qui numquam in acie pertimuerit, qui se armatus saepe in hostium manum multitudinemque immiserit, quum in ejusmodi periculis eadem se solatia suis relinquere arbitraretur quae suus pater sibi reliquisset, idem nunc conturbato animo pertimescit, ne non modo ornamento et adjumento non sit suis, sed etiam cum acerbissimo luctu dedecus aeternum miseris atque ignominiam relinquat. O fortunam longe disparem, M. Fontei, si deligere potuisses, ut potius telis tibi Gallorum quam perjuriis intereundum esset. Tum enim vitae socia virtus, mortis comes gloria fuisset; nunc vero qui est dolor victoriae te atque imperii poenas ad eorum arbitrium sufferre, qui aut victi armis sunt aut invitissimi paruerunt? A quo periculo defendite, judices, civem fortem atque innocentem: curate ut nostris testibus plus quam alienigenis credidisse videamini; plus saluti civium quam hostium libidini consuluisse; graviorem duxisse ejus obsecrationem quae vestris sacris praesit, quam eorum audaciam qui cum omnium sacris delubrisque bella gesserunt: postremo prospicite, judices, id quod ad dignitatem populi Romani maxime pertinet, ut plus apud vos preces virginis Vestalis quam minae Gallorum valuisse videantur.

gesserunt:] Klotz. has 'gesserint' in ed. 2; and I think that it should be 'gesserint.'

PRO A. CAECINA

ORATIO.

INTRODUCTION.

The following are the facts on which the case of Caecina is founded, and they are here stated nearly in the form in which Klotz has stated them in his preface to this oration, though he is not always quite accurate.

M. Fulcinius of Tarquinii, who carried on the business of a banker at Rome, was the husband of Caesennia. Fulcinius sold to his wife an estate in the territory of Tarquinii, and as he had in his hands his wife's Dos in money, the woman thus got the land in place of her Dos (c. 4). He soon after gave up his business of banker, and bought an estate which bordered on his wife's. On his death Fulcinius left as his 'heres' his son by Caesennia, but he left a 'ususfructus,' or life estate, in all his property to his wife in common with his son, who after the mother's death would have had the property. The youth M. Fulcinius died before his mother, having made P. Caesennius his 'heres,' and having given as a legacy (legatum) to his wife a large sum of money, and to his mother the greater part of his property. In order to pay the legacies a sale was necessary (auctio hereditaria). Aebutius, who had obtained some influence over Caesennia and managed her affairs, bought for her at the sale the estate of Fulcinius, which was contiguous to her own (c. 5). The property was bought by Aebutius with Caesennia's money, and for her, but in his own name, as Cicero admits (fundus addicitur Aebutio, c. 6). However Aebutius maintained that he bought the land for himself. Caesennia took possession of the land and let it (possedit locavitque, c. 6); and not long after she married A. Caecina of Volaterrae, whose cause Cicero defends in this oration. Caesennia died, and by her testament she gave to her husband A. Caecina as 'heres' 11½ parts of her property (facit heredem ex deunce et semuncia Caecinam,

c. 6); to M. Fulcinius, a freedman of her first husband, out of the remaining $\frac{1}{2}$, she gave $\frac{2}{3}$ (ex duabus sextulis), and the remaining $\frac{1}{3}$ of the $\frac{1}{2}$ (sextulam) she gave to Aebutius.

Not being content with the small share that he got by the woman's testament, Aebutius began to raise a question about the ownership. He maintained that Caecina could not take under the testament, because Sulla had deprived the Volaterrani of the rights of Roman citizens (c. 7). Cicero says that Caecina was in possession of the property and not Aebutius, as Klotz and others erroneously suppose (c. 7, notes); and Caecina determined to settle the dispute by commencing an action for a partition (familiae herciscundae). It is shown in the notes that those commentators are mistaken, who suppose that Aebutius commenced this action. Finally Aebutius gave Caecina notice that the land, which Cicero says that he bought for Caesennia, was his own, that he bought it for himself.

Cicero says that Caesennia was in possession of the estate for four years, from the time of the purchase to the time of her death (c. 7). Aebutius admitted this, but he maintained that she occupied it only as the 'usufructuarius' under the will of her husband (c. 7). Caecina upon the advice of his friends proposed to Aebutius, and it was agreed, that Caecina should be formally ejected from the land (moribus deduceretur, c. 7), which was the first proceeding necessary in order to establish a suit for the decision of the question (Pro Tullio, § 20, notes). Caecina came on the appointed day with his friends to a 'castellum,' named Axia, which was not far from the land in dispute, and there he was surprised to hear that Aebutius had got together armed men, freemen and slaves. Caecina and his friends resolved to attempt to enter on the land in dispute, but Aebutius had placed armed men both there and on the adjoining estate about which there was no dispute, the estate which Caesennia had bought of her husband. When Caecina attempted to enter upon the undisputed property, by which there was the nearest road to the other land, he was met by many armed men (c. 8). Upon this he attempted to reach by another road the disputed property (ad eum fundum profectus est, in quo ex conventu vim fieri oportebat). Being threatened with death if he passed a line of olive trees, which bounded the extremity of this estate, Caecina still continued to advance, and only retired when an assault was made on him. Upon this he applied for and obtained the Interdict of the Praetor P. Dolabella, 'De vi hominibus armatis,' without any exceptional clause in it. The order of the Praetor was simply for the restoration of Caecina to the place from which he had been ejected. Aebutius replied that he had restored him, which was only a formal way of denying that the Interdict was applicable to the facts of the case. In order to decide the question a

Sponsio was made, which was the formal way of trying the truth of the defendant's answer (see Vol. I. Excursus V.). The Praetor appointed three Judices, who are named Recuperatores, to try the case (c. 8).

Cicero supported the case of Caecina before the Recuperatores against Aebutius and L. Piso who conducted the case for Aebutius. It appears that there had been two hearings of the case, and that the Recuperatores had not been able to come to a decision (c. 2). The acts of violence were not denied by Aebutius; and Cicero says in the beginning of his speech (c. 1) that as the facts are admitted, he is well content on that head. But the advocate of Aebutius maintained that he was justified in using these acts of violence, and thus the case before the Recuperatores was made by Aebutius a question of law (de jure civili, c. 2).

The essay of Savigny on Possession (Das Recht des Besitzes) contains explanations of several of the passages in this oration. The following is his brief statement of the matter which was before the court (p. 462, 5th ed.): "The case in which Cicero appeared as the advocate of the plaintiff is briefly this: Caecina maintains that he has got a piece of land by testamentary bequest; Aebutius claims the ownership on other grounds: Caecina attempts to go upon the land, but is forcibly kept back by Aebutius and a number of armed men. It is most probable that Caecina had not yet been in possession. Cicero certainly says that he had possessed, but this affirmation which would have been decisive, comes quite at the end of the speech, and is expressed only in a couple of words (c. 31, 32), and as if it were superfluous; so that it was manifestly his object to put it in the shade; and yet in these few words we find more than one trace, from which exactly the opposite of that affirmation can be deduced (particularly the words, 'Caesenniam possedisse propter usumfructum negas,' &c.). If Caecina in fact had never had the possession, he could only gain his cause by the Judices being of opinion that Possession was not necessary for this Interdict. Accordingly it was the object of his advocate to make this false proposition as probable as possible, which Cicero has done, and consequently he cannot be quoted as historical authority."

The latest and most complete examination of the case of Caecina is by Keller (Semestrium, &c.): and in order to understand it, we must follow him through the different heads which he discusses, notwithstanding there may be a repetition of a few things which have been said in the notes on the Pro Tullio.

If a man lost the possession of a piece of ground through force, the form in which he claimed to be restored depended on the fact whether he was ejected by force of arms or by force without the use of arms. There was however only one Interdict de vi; and it was sometimes an

Interdict de vi, simply, without any addition; sometimes, when the circumstances required, it was an Interdictum de vi armata. The usual forcible ejection had accordingly no particular name. Cicero distinguishes it by the term 'vis quotidiana' (Pro Caecina, c. 32); and the Interdict applicable to such a case he calls Interdictum quotidianum (c. 31); which however is not a technical term, but merely expresses that it was the Interdict in common use. This common interdict 'de vi,' or 'quotidianum,' was of the following form, as Keller gives it:

"Unde tu Numeri Negidi aut familia aut procurator tuus Aulum Agerium aut familiam aut procuratorem illius in hoc anno vi dejecisti, qua de re agitur, cum ille possideret, quod nec vi nec clam nec precario a te possideret, eo restituas."

The principal passages which establish the truth of this formula are the following: Cicero, Pro Tullio, § 44, 45; Lex Thoria, cap. 7, ed. Rudorff, Zeitschrift für Geschicht. R. W. X. p. 151, &c.; Cicero, Pro Caecina, c. 19, 30, 31, 32; Gaius, iv. 154; Cicero, Pro Tullio, § 29; Ulpian, Ad Edictum de Vi et Vi armata, Dig. 43. 16. 1, 39.

The only direct proof that is wanting as to the form of this Interdict relates to the words, 'Qua de re agitur;' but it was a common legal formula, of which we have examples in the oration Pro Murena, c. 13; and in the Brutus, c. 79: "Qua de re agitur autem illud, quod multis locis in jurisconsultorum includitur formulis, et ubi esset, videbat." Keller shows or attempts to show the use of the words 'Qua de re agitur.' The Interdict is expressed in general terms, and does not mention the place to which it applies. The general terms are Unde and Eo; and this generality gives Cicero the opportunity of arguing (c. 28, 29) that it makes no difference whether Caecina was ejected from the Fundus Fulcinianus or from any other place; that the Praetor's Interdict did not say 'what place;' and accordingly that Caecina must get a judgment on the Sponsio, if he had been ejected from any place and had not been restored to the same place; which is a manifest bit of sophistry. The words 'Qua de re agitur,' which indicate 'the thing that comes in question,' the land in this case about which the dispute is, are adapted to meet such a sophistical argument. Keller ingeniously observes that it is no objection to his supposition of these words being in the Interdict, that Cicero takes no notice of them. There might be good reasons for that: and it is more likely that he should say nothing of these words, which were a difficulty to him, than that they should be omitted in this Interdict when they appear in other Interdicts, as in the Interdictum Uti possidetis (Dig. 43. 17. 1: Uti eas aedes, quibus de agitur) and in others.

As to the Exceptio expressed by 'cum ille possideret quod nec vi nec clam nec precario possideret,' Savigny (Das Recht des Besitzes, § 40) maintains that these words were not in the Formula, though he contends that

Possession was necessary to entitle a man to the benefit of this Interdict. But his explanation of the assumed omission of these words is very forced; and Keller confirms his position by the terms of the Interdictum Uti possidetis, which contains this Exceptio, and by the older formula in Festus (s. v. Possessio, ed. Müller, p. 233). In the oration Pro Tullio, § 29, there is a Formula something different from that in the same oration, § 44, which Keller supposes to have been the usual form in Cicero's time. Different explanations have been proposed of this diversity in the Formulae, and Keller has proposed his own (p. 308).

The other Interdict de vi, which was properly called De vi hominibus coactis armatisve, was the Interdict in this suit between Caecina and Aebutius. The form appears to have been this:

"Unde tu, Sex. Aebuti, aut familia aut procurator tuus A. Caecinam aut familiam aut procuratorem illius vi hominibus coactis armatisve dejecisti, qua de re agitur, eo restituas." The words 'coactis armatisve' are cited by Cicero (c. 21), and explained.

This Interdict differed from the Quotidianum in not containing the words 'in hoc anno,' for which we have the direct evidence of Cicero in a letter to C. Cassius (Ad Fam. xv. 16).

There were also omitted in this Interdict the Exceptiones, 'Quum ille possideret quod nec vi nec clam nec precario a te possideret;' as we see from this oration (c. 8): 'de vi hominibus armatis, sine ulla exceptione;' and from c. 22. The passage in the oration Pro Tullio, § 46, is supposed by Savigny to refer also to the Interdictum Quotidianum, but it seems that he is mistaken (see Pro Tullio, § 46, notes). Gaius (iv. 155) and Pomponius (Dig. 43. 16. 14) prove that in their time this Exceptio did not appear in the Interdictum de vi armata: "Sed si vi armata dejectus es, sicut ipsum fundum recipis, etiam si vi aut clam aut precario eum possideres, ita res quoque mobiles omnimodo recipies."

It remains to state briefly how the law relating to the Interdictum de vi armata differed from the law relating to the Interdictum Quotidianum; the several Formulae of the two Interdicta having been established and stated.

In the Interdictum de vi armata, it was required that the force must have been used 'hominibus aut coactis aut armatis,' either one way or the other. (See Pro Tullio, § 7, 'hominibus armatis coactisve.') It was immaterial whether the force consisted in actual assault or in threats of assault; which was also the case in the Interdictum Quotidianum. This is proved by the passages in Cicero (Pro Caecina, c. 14—17) and numerous passages in the Digest quoted by Keller. One of these passages will be sufficient (Dig. 43. 16. 3. § 5): "Qui armati venerunt, etsi armis non sunt usi ad dejiciendum, si dejecerunt, armata vis facta

esse videtur: sufficit enim terror armorum ut videantur armis dejecisse."

In the Interdict de vi armata, in the time of Cicero, the plaintiff was not prejudiced, if he had obtained possession 'vi, clam, aut precario ab adversario;' nor was he prejudiced if he never had acquired (juristical) possession. Savigny considers that this possession on the part of the plaintiff was as necessary in this Interdict as in the Interdictum Quotidianum; but his argument certainly does not establish this. (Das Recht des Besitzes, § 40.)

The Quotidianum Interdictum was only 'annale,' or valid within the year: the other was 'perpetuum,' not limited by any time.

The question whether Caecina had ever got possession of the Fundus in question or not is discussed by Keller (§ 4) at great length. Cicero maintains that Caesennia 'possedisse' (c. 4. 7. 32); and he attempts to show that Caecina 'possedisse.' He affirms that Caesennia was in possession of the Fundus in question, if not as her own by purchase, which he affirms to be the fact, though he does not prove it, yet that she possessed it as Usufructuarius under her first husband's will. Now it is certain that the doctrine of the Roman jurists, who are known to us, was this, that the Usufructuarius had no Possessio; but he had a Quasi-possessio, which entitled him to the Interdicts if he was ejected from his Quasi-possessio. This is most clearly expressed in a passage of Gaius (ii. § 93): "usufructuarius vero usucapere non potest: primum quia non possidet, sed habet jus utendi et fruendi." Cicero certainly does affirm that Caesennia had possession of the Fundus in question; that if she did not possess as owner of the property, she had possession as 'usufructuarius.' Keller thinks that in Cicero's time any person who had the use, enjoyment of land (uti, frui) was said 'possidere;' which may be admitted without admitting that this was a Possessio in the strict sense. He adds that Cicero repeatedly affirms that the opposite side admitted not only the fact of Possession by Caesennia, but the 'ususfructus' as the foundation of this Possession. Again, he urges, there is the argument in c. 32, that Caecina had a possession of the Fundus which was a continuation of the Possession of Caesennia by means of the colonus who occupied the land; and he adds that this would be an absurd argument, if Caesennia had only a Quasi-possessio. This is true, for Caecina claimed to have a real Possessio.

He concludes that in Cicero's time this 'juris quasi possessio' did not exist either in idea or in name, and that this Possessio was not distinguished from the 'corporis possessio.' But this does not remove the difficulty. Let it be admitted that Cicero could properly say that Caesennia had Possessio as Usufructuarius, still it is equally true that the

notion of Possessio as Usufructuarius must have been as different from the notion of Possession as owner, as the notion of Usufructuarius is different from the notion of owner. It may be true, and probably it is true, that the Roman jurists gave the doctrine of Possession the form in which it appears in the extant fragments; and denied some kinds of Possessio to be Possessio. But this was nothing more than giving greater precision to the technical part of their law; it was no alteration of the nature of the thing. The Usufructuarius possessed as Usufructuarius; he could not possess in any other way.

Suppose that Caesennia was in possession; Keller asks, is this sufficient reason for believing that Caecina was also in possession of the land as 'heres'? The answer is very easy, even without any reference to authority. The notion of Possession is the clearest in the world, when we understand by it Possession with the intention to hold as one's own. Either the Possessor holds the land, is on it, or goes on it when he pleases, uses it as he pleases, and excludes all other persons from it; or if any one trespasses on his land, the law helps him to exclude him: or he allows another as tenant (colonus), or in any other way, to be on the land, and to use it for certain purposes, such other person not affecting to hold the land as his own, but acknowledging the ownership of the owner, though he may have by contract with the owner a right to a limited use or enjoyment of the land; or he may have a right independent of the owner of the land, and derived from another, to enjoy it as Usufructuarius. Caecina could not be in possession as 'heres' except by having taken possession as 'heres;' and no more can be said on the matter. It is true that the Roman jurists lay down the law on this matter clearly enough; but we really do not want their evidence. Paulus says (Dig. 41. 2. 30. § 5): "Quod per colonum possideo, heres meus, nisi ipse nactus possessionem, non poterit possidere: retinere enim animo possessionem possumus, adipisci non possumus." And Javolenus (Dig. 41. 2. 23): "Quum heredes instituti sumus, adita hereditate omnia quidem jura ad nos transeunt: possessio tamen, nisi naturaliter comprehensa, ad nos non pertinet." Nothing is more simple than this. Though the law may have given a man the ownership of land, he cannot have the Possession without having done some act to take Possession. The English doctrine of Possession of land is the same. Possession is not acquired by the acquisition of the right to the land. Entry, as it is called, is necessary, and with the 'animus possidendi;' or the receipt of rent from a lessee for years, who has what is called by us 'the actual possession of the land,' is the same as entry; for he who has the detention of the land, he who occupies the land and pays rent, admits that he holds it for him to whom the rent is paid.

It is certain, as Keller concludes, that Cicero's argument (c. 32) that Caecina was in possession, because of the Usufructus of Caesennia is worth nothing. The possession of Caesennia, whatever it was, did not give Caecina possession, simply because he was 'heres.' It is difficult to conceive how Cicero could maintain such an argument; and the value of his argument is not increased by what follows, which is a different argument altogether. He says that Caecina entered on the land after Caesennia's death, and received from the tenant the reckonings or accounts of the farm: he received rent or what was equivalent to it. Savigny's explanation of this may be rejected. He supposes that Caecina transacted this business solely with reference to past time, and with reference to the letting of Caesennia, and that he settled the accounts between the testatrix and the colonus. This may be so, or it may not. All that Cicero says is that he entered on the land and received some accounts from the tenant. Cras supposed that these facts show that Caecina took possession; and he is so far right as this: he may have taken possession, and Cicero's words may mean that he did take possession. But they may mean what Savigny supposes. The conclusion is; we do not know whether Caecina had taken possession or not. The matter is not worth further discussion, for it cannot be determined.

Cicero's next argument to prove Caecina's possession is the 'denunciatio' of Aebutius (c. 7. 32). Cicero says that Aebutius gave some notice to Caecina about the land in question; from which notice, whatever it was, he wishes us to conclude that Caecina was in possession of it. Keller shows that 'denunciatio' is a term applicable to notice of various kinds; which is true, and thus no certain conclusion about possession can be derived from Cicero's words that Aebutius gave notice to Caecina.

The last argument for Caecina's possession (c. 32) is this: Why did Caecina propose that there should be the 'moribus deductio,' if he was not in possession? Cicero tells us that Caecina proposed this on the advice of his friends (c. 7) and even on the advice of Aquilius (c. 32). It also appears that he was going to the land in order to be formally turned out, and that Aebutius was already on the land, if not in possession in the legal sense, at least in the ordinary sense. This does not prove that Aebutius was in possession or that Caecina was not; but if Caecina was in possession, why was it agreed that he should be formally ejected (moribus deduceretur), and so take the place of plaintiff? For he 'qui deduxit' must be considered in possession; and 'is qui deductus est' as the person who attempts to take possession and is prevented. In the case of Tullius (c. 20), Fabius proposed that he should either formally eject Tullius or that Tullius should be formally ejected by him;

and Tullius chose to be the 'deductor;' and accordingly was to be recognized as the person in possession. On this passage of the oration Pro Tullio Keller remarks, "we can scarcely doubt that Tullius was in possession of the fundus." Keller concludes that Cicero's argument about the Deductio proves that Aebutius was in possession. But this is perhaps not a true conclusion. The conclusion from the agreement about the Deductio is, that by the act of Deductio Aebutius was to be treated as the Possessor. The conclusion is not that he was Possessor before the act of Deductio. On the whole it seems doubtful whether Caecina or Aebutius had the Possession; it appears that the question of Possession was to be settled by the Deductio moribus; and so Cicero's argument may be good as far as this—there would have been no talk about a Deductio with respect to this Fundus, if Caecina was not the Possessor or did not claim to be the Possessor.

This part of the question is viewed by Keller as follows. He considers Cicero's argument founded upon the fact of Caecina wishing to be formally ejected as a piece of sophistry, which he says may be put in this form:

A man cannot be formally ejected (deduci) unless he is on the land. But he who is on the land is in possession. It must follow then that Caecina is in possession, as he asks to be ejected by Aebutius.

He affirms that the character of the 'deductio quae moribus fit' is altogether opposed to this kind of argument. He first shows from Gaius (iv. 16) what was the nature of the 'legis actio' when the question was about the ownership of land. If the thing was a moveable thing, it was brought before the praetor (in jus), and the ownership was claimed by each party in turn laying his hand on it. This was followed by the 'provocatio' to the Sacramentum. He who had first made the claim said: "Quando tu injuria vindicavisti D aeris sacramento te provoco." His opponent also said: "Similiter ego te." The praetor then gave the 'vindiciae' in favour of one of them, that is, in the mean time he appointed one to be in possession, and ordered him to give security to the other for the thing itself and the intermediate profits (praedes adversario dare litis et vindiciarum). If the thing could not be brought into court, a part of it was brought, and the 'vindicatio' was made as if the whole thing was present: for instance a clod was brought from the land, or a tile from the house.

When the 'legis actiones' were abolished, and the formula was introduced, the plaintiff (actor) proceeded thus in the Sponsio: "Si fundus quo de agitur ex jure Quiritium meus est, sestertios XXV nummos dare spondes;" and then he presented the formula in which he declared (intendebat) that the amount of the Sponsio was due to him. In like manner the defendant had to give the plaintiff security by a peculiar

'stipulatio,' which after the fashion of the old Legis actio was called 'pro praede litis et vindiciarum' (Gaius iv. 93, 94). In these two forms we observe that the Sponsio corresponded to the Sacramentum, and that there was a resemblance in the security (satisdatio).

But what became of the 'manuum consertio,' or the claim of each party made by the manual apprehension, and of the 'vindiciae' which was fixed by the Praetor?

In order to simplify the proceedings before the Praetor, the manual apprehension and the possession were left to be settled by the parties themselves; and as the mode of doing this was established by usage, it was called 'moribus deductio.' For what, says Keller, was the effect of the old 'manuum consertio' (Pro Murena, c. 12), and the declaring of the 'vindiciae' or possession by the Praetor? It was plainly this: both parties claimed the ownership of the thing, but by this proceeding it was settled that during the suit one of the parties should be in possession and should be the defendant; the other was to be the plaintiff.

Upon the abolition of the Legis actiones, the same thing was accomplished by the Deductio. Accordingly he who was not in possession made a show of an attempt to enter and take possession, while his opponent made a show of resistance, and as it were 'deducebat' or put the other off the land. Yet to show that this was merely a form, he promised to defend his title (vadimonium promittebat) against the man who had attempted to enter, and thus became the defendant in the action.

Accordingly Keller supposes that this Deductio was a preliminary to the In rem actio, whenever there was a dispute about the ownership, but no dispute about the present possession. As he 'qui deduci se passus est' was the plaintiff, and he 'qui deducebat' was in possession and the defendant, it is plain that when both parties claimed to be in possession neither would consent 'deduci,' and either would consent 'deducere.' In this case the proceeding was by the Interdictum Uti possidetis.

As to Cicero's argument then that Caecina, unless he had been in possession, would not have proposed that he should be formally ejected by Aebutius, Keller concludes that this very proposition is an argument that Caecina, so far from being in possession, had at the time of the agreement about the Deductio admitted that Aebutius was in possession. Keller attempts to explain (p. 372) how Cicero might use such a false argument, and yet have some show of reason in it.

If Keller's views are correct, neither the Deductio, nor the Denunciatio, nor the Usufructus and letting of Caesennia shows that Caecina was in possession. This is also the opinion of Savigny (Besitz, § 40).

Little attention seems to have been paid by the critics to one part of

Cicero's case (c. 11). Cicero says that one fact is admitted, that Caecina having come at the appointed time 'ut vis ac deductio moribus fieret,' was not allowed to enter on the land. He was driven away by force and by armed men. It had been agreed (c. 7) that Caecina should be formally ejected; and yet this was not done, owing to the violence of Aebutius. What was the remedy in such a case? Cicero maintains that these facts gave Caecina the benefit of the Interdict. If we were to suppose that the person 'qui deducebatur' was supposed to be the party in possession, and the person 'qui deducebat' to be the party who was supposed to get the possession by the 'deductio,' then the agreement as to the 'deductio' might be fairly interpreted to be an admission that Caecina was in possession, or for the purpose of the action was to be considered as in possession. This matter is still very obscure, after all the labour that has been bestowed on it; and I am not convinced that any of the commentators on this oration is right on all points. Keller has endeavoured to explain why Aebutius would not let Caecina come on the land; and he finds it somewhat difficult (p. 391).

It remains to consider the defence of Aebutius, 'Non dejeci, sed obstiti.' It is settled or supposed to be settled that Caecina was not in possession; but in this trial the fact of possession did not come into question. The only question was if the man had been driven out of the land by force of arms. Now, as Keller observes, Piso the advocate of Aebutius maintained that Caecina was not on the ground when he suffered the violence; that there was a great difference between a man being ejected from the place where he was and being prevented from approaching and entering; that a man who was prevented from approaching could not be said 'dejici;' and finally that the interdict was only for those who had been actually ejected (dejecti). This argument of Piso is referred in the following chapters: 11, 13, 14, 17, 23.

A good part of Cicero's oration is occupied with his answer to this argument (c. 13, 17, 18, 23—31). In the time of Gaius and Ulpian it was indifferent whether a man who was (legally) in possession was ejected and thrust out, or prevented from entering when he wished. In either case there was a 'dejectio.' In the case of this Interdictum, as already shown, it was immaterial whether the plaintiff had been in possession or not: if he was driven by force from the ground, he must be restored. Cicero (c. 12) attempts to answer the argument of Piso, which was that a man could not be 'dejectus' from a place in which he was not. Cicero in this part of his argument does not insist on Caecina's possession; and he compares the case of Caecina, who was prevented from entering on the land, with the supposed case of Piso being prevented from entering his own house. Keller has made an answer to this argument in Piso's name. The answer is very easy; for

unless Caecina was (legally) in possession, his case cannot be compared with the supposed case of Piso being prevented from entering the house in which he lived, and of which he had possession. Caecina (c. 3) claimed to recover the possession by virtue of the Interdict; and it appears from what Cicero says (c. 27), that even if he had never been in possession and was not ejected from the land he must still be restored to the possession by Aebutius, if he got a judgment in his favour. Keller concludes (p. 387) that Piso's defence was just, when he maintained that the Interdict had no effect unless the plaintiff, when he suffered the violence, either had been in possession or was corporeally on the land; and that Cicero rather relied on the words of the Interdict, while Piso relied on the equity of the case and the real meaning of the Interdict. And this appears to be a just conclusion.

I shall conclude this tedious but necessary introduction with the following remark in Keller's Latin.

"Quod si praeterea Caecinae caussa, id quod satis est credibile, aequitatem quandam habere videretur, quia forte, quae de emptione fundi Cicero narrat, opinione hominum plus quam legitimis probationibus ad capiendos recuperatorum animos valerent; tum quia fortasse Aebutius fundi possessionem, ex morte Caesenniae quasi vacuam suspensamque, avide magis et callide quam honeste occupasset atque Caecinam heredem possessoremque bonorum, paucis diebus praevenisset:—facili hercle negotio salvaque recuperatorum et religione et fama, quod tum interdicti jus obtinebat, fieri potuit ut probabilem atque adeo justam caussam Caecina habere videretur: quamquam illi minime sunt stultitiae damnandi, qui bis prius dubitaverunt quam secundum Caecinam judicarent" (p. 390).

It is not known if Cicero's client won his cause, but it has been inferred from a passage in the Orator ad M. Brutum that he did, for he speaks of his oration as if he were satisfied with it. But this is not a certain conclusion. There is some correspondence in the collection of Cicero's letters between himself and Aulus Caecina, who calls himself an old client of Cicero (Ad Fam. vi. 7).

I have used for the text of this oration Keller's various readings (Semestr. p. 435—538) and his useful notes on the various readings. Keller has used the 'Lectiones variantes ad Orationes Pro A. Cluentio, M. Caelio, A. Caecina, &c.' by Am. Peyron, Stuttgard and Tübingen, 1824. 4. p. 199—213; and also the 'Variae Lectiones librorum aliquot M. Tullii Ciceronis ex Codice Erfurtensi enotatae ab Eduardo Wunder, Lipsiae, 1827-8.' He also collated eight MSS. which he describes. I have compared the text also with Baiter's edition of this oration in the new edition of Orelli's Cicero, where the readings are given more fully than in Orelli's first edition. I have occasionally referred to some

of the MSS. Baiter's P is the Turin Palimpsest; E which I have sometimes written Erf. is the 'Cod. Erfurtensis nunc Berolinensis:' T is the 'Cod. Tegernseensis:' V. is the 'Cod. Palatinus.' R = 'Reliqui codices praeter eos quos quovis loco enumeravimus:' A = 'Editio Ascensiana prima a. 1544.' Keller's three Paris MSS. are Pe, Pk, Pm.

I have also used Klotz's edition, and I have read his remarks on the various readings in his Vorrede (Preface).

M. TULLII CICERONIS

PRO

A. CAECINA ORATIO.

I. Si quantum in agro locisque desertis audacia potest, tantum in foro atque in judiciis impudentia valeret, non minus nunc in caussa cederet A. Caecina Sex. Aebutii impudentiae quam tum in vi facienda cessit audaciae. Verum et illud considerati hominis esse putavit, qua de re jure disceptari oporteret, armis non contendere; et hoc constantis, quicum vi et armis certare noluisset, eum jure judicioque superare. Ac mihi quidem quum audax praecipue fuisse videtur Aebutius in convocandis hominibus et armandis, tum impudens in judicio, non solum quod in judicium venire ausus est, nam id quidem tametsi improbe fit in aperta re, tamen malitia est jam usitatum, sed quod non dubitavit id ipsum quod arguitur confiteri: nisi forte hoc rationis habuit, quoniam, si facta vis esset

1. *Si quantum—cessit audaciae.*] This is quoted by Quintilian, Instit. ix. 3. 80, with some variations.

considerati] Compare Pro Fonteio, c. 13: 'illud verbum consideratissimum.' The word has, as it seems, an active and a neuter sense; but it always means reflection in the subject or person. A 'vir consideratus' is a man who retires into himself; who sits down, as the etymology shows, and reflects.

disceptari] 'Decertari,' the reading of most MSS.; but E. T. have 'deceptari,' whence Baiter makes 'disceptari,' probably the true reading, and refers to Cicero (Verr. ii. 2. c. 15), 'aequo jure disceptare liceat;' Pro Plancio, c. 36; De Offic. i. 11. See Vol. I. Verr. ii. 3. c. 72; and Pro Caecina, c. 2, 'disceptatore domestico.'

jure judicioque] '*in re* judicioque,' Pk.; which may mean 'in jure judicioque.' 'In jure,' 'before the Praetor,' is a common expression (Vol. I. Verr. ii. 2. c. 24); but 'jure' seems to be right here.

malitia] See Vol. I. Verr. Act. i. c. 11.

quoniam, si—discessurum] Keller prefers the reading 'quum' or 'cum' to 'quoniam,' provided we give to the particle the 'vis temporalis' (i. e. 'tum,' 'quum,' Germ. *da, als*); and he observes that 'nunc quoque' corresponds to this 'then when.' This is a true explanation; but 'quoniam' is only 'quum jam,' and that expresses the meaning.

It is difficult to make a satisfactory punc-

moribus, superior in possessione retinenda non fuisset; quia contra jus moremque facta sit, A. Caecinam cum amicis metu perterritum profugisse; nunc quoque in judicio, si caussa more institutoque omnium defendatur, nos inferiores in agendo non futuros; sin a consuetudine recedatur, se quo impudentius egerit hoc superiorem discessurum. Quasi vero aut idem possit in judicio improbitas quod in vi confidentia, aut nos non eo libentius tum audaciae cesserimus quo nunc impudentiae facilius obsisteremus. Itaque longe alia ratione, recuperatores, ad agendam caussam hac actione venio atque initio veneram. Tum enim nostrae caussae spes erat posita in defensione mea, nunc in confessione adversarii; tum in nostris, nunc vero in illorum testibus: de quibus ego antea laborabam, ne, si improbi essent, falsi aliquid dicerent, si probi existimarentur, quod dixissent probarent, nunc sum animo aequissimo. Si enim sunt viri boni, me adjuvant, quum id jurati dicunt quod ego injuratus insimulo. Sin autem minus idonei, me non laedunt; quum iis sive creditur, creditur hoc ipsum quod nos arguimus, sive fides non habetur, de adversarii testium fide derogatur. II. Verum tamen quum illorum actionem caussae considero, non video quid impudentius dici possit; quum autem vestram in judicando dubitationem, vereor ne id quod videntur impudenter fecisse astute et callide fecerint. Nam si negassent vim hominibus armatis esse factam, facile honestissimis testibus in re perspicua tenerentur; sin confessi essent, et id quod nullo tempore jure fieri potest, tamen ab se jure factum esse defenderent, sperarunt, id quod assecuti sunt, se injecturos vobis caussam deliberandi et judicandi justam moram ac religionem; simul illud, quod indignissimum est, futurum arbitrati sunt, ut in hac caussa non de improbitate Sex. Aebutii, sed de jure civili judicium fieri videretur. Qua in re si mihi esset unius A. Caecinae caussa agenda, profiterer satis idoneum esse me defen-

tuation of this sentence. Any punctuation of it may mislead, if punctuation is to be our guide in reading. But it is only necessary to read it carefully to see the meaning, and the ἀνακόλουθον, as they call it, will not appear.

moribus,] See Pro Tullio, c. 20. 'Mos,' or that which usage established, is reckoned by Cicero among one of the sources of Roman law (Topic. 5).

2. *actionem caussae*] Or 'caussae actionem' as many MSS. have it; but 'actionem caussae' seems the better order, like 'actore caussae' a little further on.

sin confessi essent, — sperarunt,] One of Keller's MSS. has 'sperarent,' a reading of no value, for the corresponding member to 'sin confessi essent' must express a fact here. It means 'by admitting, &c., they hoped.'—'tamen ab se:' better than the reading 'tum ab se.'

de jure civili] Klotz has a note against Hotmann's incorrect explanation of these words. There is no difficulty in them. 'Jus civile' is the whole law of any state. Cicero says that the question is the maintenance of the law itself. He explains his meaning afterwards: "sed quum de eo jure mihi dicendum sit quod pertineat ad omnes," &c.

sorem, propterea quod fidem meam diligentiamque praestarem, quae quum sunt in actore caussae, nihil est in re praesertim aperta ac simplici quod excellens ingenium requiratur. Sed quum de eo mihi jure dicendum sit quod pertineat ad omnes, quod constitutum sit a majoribus, conservatum usque ad hoc tempus, quo sublato non solum pars aliqua juris deminuta, sed etiam vis ea quae juri maxime est adversaria judicio confirmata esse videatur, video summi ingenii caussam esse, non ut id demonstretur quod ante oculos est, sed ne, si quis vobis error in tanta re sit objectus, omnes potius me arbitrentur caussae quam vos religioni vestrae defuisse. Quamquam ego mihi sic persuadeo, recuperatores, non vos tam propter juris obscuram dubiamque rationem bis jam de eadem caussa dubitasse, quam quod videtur ad summam illius existimationem hoc judicium pertinere, moram ad condemnandum acquisisse, simul et illi spatium ad sese colligendum dedisse. Quod quoniam jam in consuetudinem venit, et id viri boni, vestri similes, in judicando faciunt, reprehendendum fortasse minus, querendum vero magis etiam videtur, ideo quod omnia judicia aut distrahendarum controversiarum, aut puniendorum maleficiorum caussa reperta sunt; quorum alterum levius est, propterea quod et minus laedit, et persaepe disceptatore domestico dijudicatur; alterum est vehementissimum, quod et ad graviores res pertinet, et non honorariam operam amici, sed severitatem judicis ac vim requirit. Quod est gravius et cujus rei caussa maxime judicia constituta sunt, id jam mala consuetudine dissolutum est. Nam ut quaeque res est turpissima, sic maxime et maturissime vindicanda est: at de eadem hac, quia existimationis periculum est, tardissime judicatur. III. Qui igitur convenit, quae caussa fuerit ad constituendum judicium, eandem moram esse

deminuta,] There is also the reading 'diminuta.' See Vol. I. Verr. ii. 3. c. 55.

bis jam] There had been two hearings of the case, and it was adjourned to a third. Judices or Recuperatores could adjourn a case in order to inform themselves better.

summam illius existimationem] It was not true that Infamia was a consequence of an adverse judgment in the case of the Interdictum de vi, or in the case of any other Interdict (Dig. 43. 16. 13); and Cicero could not intend to affirm what every body knew to be false. A judgment against Aebutius would however be a Praejudicium, as the Romans called it, and would be some evidence against him if his violent acts were the subject of a Publicum de vi Judicium.

acquisisse,] Klotz and Baiter have 'anquisisse,' which is a conjecture of Gulielmius.

distrahendarum] This word is explained by the following passage (Gaius iv. 91): "sed haec species obligationis non videtur ex contractu consistere, quia is qui solvendi animo dat, magis distrahere vult negotium quam contrahere."—'disceptatore domestico:' a friend to whose decision a dispute is referred. Compare Pro P. Quintio, c. 11; and Vol. I. Verr. ii. 3. c. 72.

at de eadem hac,] This is the reading of the Turin Palimpsest (prima manu): the other reading is 'at eadem,' which Baiter follows. Klotz has some remarks on the passage (Pref. p. 7).

ad judicandum? Si quis, quod spopondit, qua in re verbo se obligavit uno, id non facit, maturo judicio, sine ulla religione judicis condemnatur: qui per tutelam aut societatem aut rem mandatam aut fiduciae rationem fraudavit quempiam, in eo, quo delictum majus est, eo poena est tardior. Est enim turpe judicium.—Ex facto quidem turpe. Videte igitur quam inique accidat, quia res indigna sit, ideo turpem existimationem sequi; quia turpis existimatio sequatur, ideo rem indignam non vindicari. Ac si qui mihi hoc judex recuperatorve dicat: 'Potuisti enim leniore actione confligere: potuisti ad tuum jus faciliore et commodiore judicio pervenire; quare aut muta actionem, aut noli mihi instare ut judicem;' tamen is aut timidior videatur quam fortem, aut cupidior quam sapientem judicem esse aequum est, si aut mihi praescribat quemadmodum meum jus persequar, aut ipse id quod ad se delatum sit non audeat judicare. Etenim si praetor, is qui judicia dat, numquam petitori praestituit qua actione illum uti velit, videte quam iniquum sit constituta jam re, judicem quid agi potuerit aut quid possit, non quid actum sit, quaerere. Verumtamen nimiae vestrae benignitati pareremus, si alia ratione jus nostrum recuperare possemus. Nunc vero quis est qui aut vim hominibus armatis factam relinqui putet oportere, aut ejus rei leniorem actionem nobis aliquam demonstrare possit? Ex quo genere peccati, ut illi clamitant, vel injuriarum vel capitis judicia constituta sunt, in eo potestis atrocitatem nostram reprehendere, quum videatis nihil aliud actum nisi possessionem per interdictum esse repetitam? IV. Verum sive vos existimationis illius periculum, sive juris dubitatio tardiores fecit adhuc ad judicandum, alterius rei caussam vosmetipsi jam vobis saepius prolato judicio sustulistis, alterius ego vobis

3. *verbo—uno,*] The 'verbum' is 'spondeo.' See Pro P. Quinctio, c. 18. Baiter repeats 'si' before 'id non facit,' following the Palimpsest. There is an instance in c. 20 of a like repetition. From the verb 'obligare' was formed the Roman general term 'obligationes.' Hence 'verborum obligationes' is one of the forms of 'obligatio' in which the duty on one side and the right on the other arise from the form of words employed in the contract (Gaius, iv. 92).

Ex . . . turpe.] 'Ex . . . turpi,' Baiter; which may be the true reading; or 'et ex facto quidem turpi.'—'turpem existimationem;' this is Infamia, a consequence of a condemnation in the actions which have just been mentioned. See Dig. 3. tit. 2, 'de his qui notantur infamia;' where there are mentioned among those who are marked as Infames, 'qui pro socio, tutelae, mandati, depositi suo nomine non contrario judicio damnatus erit.' Compare Pro Sex. Roscio Amer. c. 38, and Pro Q. Roscio Com. c. 6.

Ac si] P. E. T. There is also authority for 'at si.'—'leniore:' there is a reading 'leviore.'

is qui judicia dat,] The office of the praetor is sometimes designated by these words. Other 'magistratus' could 'dare judicia,' in the provinces at least (Vol. 1. Div. c. 17, note).

relinqui] This word has the same meaning as 'negligi,' 'not to be prosecuted.' Compare c. 36: 'jus suum dissolute relinquere.'

hodierno die caussam profecto auferam, ne diutius de controversia nostra ac de communi jure dubitetis. Et si forte videbor altius initium rei demonstrandae petisse quam me ratio juris et jus de quo judicium est, et natura caussae coegerit, quaeso ut ignoscatis. Non enim minus laborat A. Caecina ne summo jure egisse, quam ne certum jus non obtinuisse videatur.

M. Fulcinius fuit, recuperatores, e municipio Tarquiniensi, qui et domi suae cum primis honestus existimatus est, et Romae argentariam non ignobilem fecit. Is habuit in matrimonio Caesenniam eodem e municipio, summo loco natam et probatissimam feminam, sicut et vivus ipse multis rebus ostendit et in morte sua testamento declaravit. Huic Caesenniae fundum in agro Tarquiniensi vendidit temporibus illis difficillimis solutionis. Quum uteretur dote uxoris numerata, quo mulieri esset res cautior, curavit ut in eo fundo dos collocaretur. Aliquanto post jam argentaria dissoluta, Fulcinius huic fundo uxoris continentia quaedam praedia atque adjuncta mercatur. Moritur Fulcinius: multa enim quae sunt in re, quia remota sunt a caussa, praetermittam: testamento facit heredem quem habebat e Caesennia filium: usum et fructum

4. *juris et jus de quo*] 'juris ejus de quo:' the conjecture of Faber, which Baiter follows. There seems to be no reason for the emendation. Keller observes that Priscian and Quintilian say that Cicero wrote 'eiius;' and if this is true, and 'eiius' was the original reading, it might easily be corrupted into 'et ius.' The 'ratio juris' is the general law, the rule of law: 'jus de quo' is the matter before the court. 'Certum jus non obtinuisse' means 'not to have maintained his indisputable rights.'

Tarquiniensi,] Tarquinii was an old Etrurian city on a hill upon the river Marta. Its early wars with Rome are mentioned by Livy (v. 16; vii. 15, &c.). Cicero calls it a 'municipium,' which was its relation to Rome before the enactment of the Lex Julia, B.C. 90. But the people were now Roman citizens.

argentariam] See Vol. I. Verr. ii. 5. c. 59. Klotz supposes that 'non ignobilem' means that Fulcinius carried on his business in an honest way, and that many 'argentarii' did not. But this is not the meaning. He had what we call a considerable business.

vendidit] Rau puts a full stop after 'vendidit;' and he connects 'temporibus .... solutionis' with what follows, which explains the reason of the sale (Keller). He may be right. As to these difficult times for effecting sales, Cicero alludes to the times of Sulla.

Fulcinius, according to usage, had received the 'dos' of his wife; but he was answerable for it (Dig. 23. 3. 42), for this 'dos' was paid him in money (dos numerata). In order to secure it to his wife, he invested it in land. He sold to his wife land of his own, and instead of receiving the price, he was released from his obligation as to the 'dos.' Modestinus says (Dig. 23. 3. 26): "Ita constante matrimonio permutari dotem posse dicimus, si hoc mulieri utile sit, ut ex pecunia in rem, aut ex re in pecuniam: idque probatum est." The land thus acquired became 'fundus dotalis,' which the husband could not alienate nor charge with any burden (Dig. 23. 5. 4). Klotz writes 'quum uteretur uxoris dote numerata,' following the Erf. I see no great reason for preferring this order, but he does.

argentaria dissoluta,] If it was a partnership, the Romans said 'dissolvere societatem.' But it does not appear that this was a partnership; and 'dissoluta' merely means that the business was given up.

usum et fructum] He made his son 'heres ex asse.' Caesennia received what

omnium bonorum suorum Caesenniae legat ut frueretur una cum filio. Magnus honos viri jucundus mulieri fuisset, si diuturnum esse licuisset. Frueretur enim bonis cum eo quem suis bonis heredem esse cupiebat, et ex quo maximum fructum ipsa capiebat. Sed hunc fructum mature fortuna ademit. Nam brevi tempore M. Fulcinius adolescens mortuus est: heredem P. Caesennium fecit: uxori grande pondus argenti matrique partem majorem bonorum legavit. Itaque in partem mulieres vocatae sunt. V. Quum esset haec auctio hereditaria constituta, Aebutius iste, qui jamdiu Caesenniae viduitate ac solitudine aleretur, ac se in ejus familiaritatem insinuasset hac ratione, ut cum aliquo suo compendio negotia mulieris si qua acciderent controversiasque susciperet, versabatur eo quoque tempore in his rationibus auctionis et partitionis, atque etiam se ipse inferebat et intrudebat et in eam opinionem Caesenniam adducebat, ut mulier imperita nihil putaret agi callide posse ubi non adesset Aebutius. Quam personam jam ex quotidiana cognoscitis vita, recuperatores, mulierum assentatoris, cognitoris viduarum, defensoris nimium litigiosi, conciti ad rixam, inepti ac

she did receive as a 'legatum' or legacy. The 'heres' took 'per universitatem:' all the property of the testator, as in this case, passed to him, as Gaius says (ii. 98): 'si cui heredes facti sumus . . . ejus res ad nos transeunt.' There were various forms in which a legacy was given (Gaius, iv. 192). 'Ususfructus' is 'jus alienis rebus utendi fruendi salva rerum substantia' (Dig. 7. 1. 1): it was the right to use a thing, and to take the fruits of it. This is expressed by 'usus et fructus;' and sometimes by one word, 'ususfructus.' The Ususfructuarius had the enjoyment of a thing, the property (proprietas) of which belonged to another; as in this instance the property of the deceased passed to the son. The utmost limit of a Ususfructus was the life of the person who was entitled to it. It was generally a life estate, and it could not be more (Dig. 45. 1. 38. § 12). A Ususfructus of a whole property might be given, or of a part, as in this case to Caesennia. A whole property is here expressed by 'omnia bona.'

honos] See Pro P. Quintio, c. 4; to which may be added the references to Sueton. Augustus, c. 66, and to Cicero, Philip. ii. c. 16.

legavit.] The young man made Caesennius his 'heres;' but he gave a legacy of a large sum of money to his wife, and to his mother a legacy of the greater part of his property. A 'legatum' is a part taken from the whole 'hereditas' or succession (Dig. 30. 116). There could be no 'legatum' unless there was a 'heres' instituted by the testament. Accordingly the testator was said 'legare ab herede' (Dig. 30. 116); which expression Cicero uses (Pro Cluentio, c. 12): "ei testamento legat grandem pecuniam a filio . . . .; ab secundo herede nihil legat."

Itaque in partem &c.] The women were invited or had notice to come and take their shares; and for this purpose there was a sale of the property included in the 'hereditas,' or of so much as was necessary to pay the legacies ('auctio hereditaria,' c. 5). Comp. Cicero, Ad Fam. xiv. 5, "De hereditate Preciana," &c.

5. *intrudebat*] Klotz and Baiter have 'intro dabat,' for which there is the better MSS. authority; but it appears that we have no example of 'intro dabat' thus used. Klotz says that 'intro dare' is an expression derived from the domestic life of the Romans, &c.: but he gives no example of it. In his Preface (p. 12) he makes two objections to 'intrudebat.' The first is that the word occurs no where else, so far as we yet know.

cognoscitis vita] 'Vita cognoscitis:' Baiter; but the other order is perhaps the better. The emendation of Weiske, 'cognovistis,' is quite unnecessary. 'Quam personam' means 'this kind of character.' See Vol. I. Verr. ii. 2. c. 17.

conciti ad rixam,] 'conciti ad regiam,'

stulti inter viros, inter mulieres periti juris et callidi, hanc personam imponite Aebutio; is enim Caesenniae fuit Aebutius. Ne forte quaeratis, num propinquus? nihil alienius. Amicus aut a patre aut a viro traditus? nihil minus. Quis igitur? ille, ille, quem supra deformavi, voluntarius amicus mulieris, non necessitudine aliqua, sed ficto officio simulataque sedulitate conjunctus, magis opportuna opera nonnumquam quam aliquando fideli. Quum esset, ut dicere institueram, constituta auctio Romae, suadebant amici cognatique Caesenniae, id quod ipsi quoque mulieri veniebat in mentem quoniam potestas esset emendi fundum illum Fulcinianum, qui fundo ejus antiquo continens esset, nullam esse rationem amittere ejusmodi occasionem, quum ei praesertim pecunia ex partitione deberetur; nusquam posse eam melius collocari. Itaque hoc mulier facere constituit: mandat ut fundum sibi emat. Cui tandem? cui putatis? An non in mentem vobis venit omnibus illius hoc munus esse ad omnia mulieris negotia parati, sine quo nihil satis caute, nihil satis callide posset agi? Recte attenditis. VI. Aebutio negotium datur. Adest ad tabulam; licetur Aebutius; deterrentur emptores multi, partim gratia Caesenniae, partim etiam pretio. Fundus addicitur Aebutio: pecuniam argentario promittit Aebutius: quo testimonio nunc vir optimus utitur sibi emptum esse; quasi vero aut nos ei negemus addictum, aut tum quisquam fuerit qui dubitaret quin emeretur Caesenniae; quum id plerique scirent, omnes fere audissent, hi conjectura assequi possent, quum pecunia Caesenniae ex illa hereditate deberetur, eam porro in praediis collocari maxime expediret, essent autem praedia, quae mulieri maxime convenirent, ea venirent, liceretur is, quem Caesenniae dare operam nemo miraretur, sibi emere nemo posset suspicari. Hac emptione facta, pecunia solvitur a Caesennia; cujus rei putat iste

P.E.T.; 'conciti ad regiam,' R.A. Baiter has 'contriti ad Regiam;' and Keller has a good note on the passage. 'Concitus ad rixam' may be Latin, though it does not occur elsewhere in Cicero. 'Contritus' is well said of a man who is practised and hardened in a thing, as Cicero (De Or. i. 58): "quum in caussis et in negotiis et in foro conteramur." As to the 'in Regiam,' Keller observes that it is not mentioned by Cicero or by any other writer of that age, when they are speaking of matters which are done in the Forum.

Keller refers to Plutarch, Numa, c. 14; and Forcellini, Regia and Basilica. Those who admit the reading 'ad Regiam' suppose that a Basilica is meant, of which word Regia is the Roman expression.

a viro traditus?] 'Introduced or recommended.' Comp. Cicero, Ad Fam. vii. 5: "totum denique hominem tibi ita trado de manu, ut aiunt."

6. *addicitur*] See Vol. I. Verr. ii. 2. c. 32.—'argentarius:' he was employed in sales to receive the money, and in many other matters of business (Gaius, iv. 126; Pro P. Quintio, c. 6).

hi conjectura] '*qui non audisset*, is conjectura assequi posset.' Baiter. This is one of the conjectures on this passage. The difficulty consists in finding out who are meant by 'hi,' which word is probably corrupted; or it means 'some others,' opposed to 'omnes fere.'

rationem reddi non posse, quod ipse tabulas averterit; se autem habere argentarii tabulas, in quibus sibi expensa pecunia lata sit acceptaque relata: quasi id aliter fieri oportuerit. Quum omnia ita facta essent, quemadmodum nos defendimus, Caesennia fundum possedit locavitque; neque ita multo post A. Caecinae nupsit. Ut in pauca conferam, testamento facto mulier moritur. Facit heredem ex deunce et semuncia Caecinam, ex duabus sextulis M. Fulcinium, libertum superioris viri, Aebutio sextulam aspergit. Hanc sextulam illa mercedem isti esse voluit assiduitatis et molestiae, si quam ceperat. Iste autem hac sextula se ansam retinere omnium controversiarum putat. VII. Jam principio ausus est dicere non posse heredem esse Caesenniae Caecinam; quod is deteriore jure esset quam ceteri cives, propter incommodum Volaterranorum calamitatemque civilem. Itaque homo timidus imperi-

tabulas averterit;] The money was not paid by Caesennia herself, but on the part of Caesennia (a Caesennia) as Cicero intends to say. But there was no proof of this, for Aebutius had put out of the way, hid, or destroyed the books of Caesennia, in which he was charged with the sum payable for the estate. Aebutius could show the banker's books in which he was charged with the sum due for the purchase (expensa pecunia lata), and in which there was on the other side an acknowledgment of the receipt of the money from him (accepta relata). The books of the 'argentarius' were used as evidence; and he might be compelled to produce them (Dig. 2. 13. 4): "Praetor ait: Argentariae mensae exercitores rationem quae ad se pertinet edant adjecto die et consule;" and again in the same title (s. 10): "Argentarius rationes edere jubetur, nec interest cum ipso argentario controversia sit an cum alio."

possedit] She took possession as owner; for 'possedit' has also the sense of taking possession.

7. *Volaterranorum*] Volaterrae (Volterra) the largest of the twelve Etrurian cities. See Pro Sex. Rosc. Am. c. 7. Aebutius, as Cicero says, alleged that Caecina had not the capacity to take under his wife's will, because he had not the rights of a Roman citizen (ut de civitate in dubium veniret). This matter is examined in the notes to c. 35.

Itaque homo timidus—suum esse seque sibi emisse.] This narrative, from the words 'Hanc sextulam illa mercedem,' &c. down to 'sibi emisse,' has caused some of the commentators great perplexity. Keller has examined the passage, and come to the right conclusion. Cicero says ironically that Caecina gave way to Aebutius: and then he says, as the fact was, that he did not do so; he ground to dust, he crushed his dishonest claim (calumnia). The question then is to whom do the words 'quum esset,' 'exaggeraret' and 'postulavit' refer. If 'quum ipse sextulam' is the right reading, all these verbs must refer to Aebutius, though the change of person from Caecina who 'obtrivit ac contudit' to Aebutius, of whom is said 'quum esset,' &c. is very strange. But this change of person must be admitted, if we allow that '*ipse*—exaggeraret' is right.

But who was the person 'qui nomine heredis arbitrum .... postulavit?' Aebutius had threatened Caecina with a legal inquiry as to his capacity to be heres; and Caecina answered the threat by proposing a form of proceeding which should determine the question. Now the form of proceeding which was adopted was one for the division of the 'hereditas:' "per familiae herciscundae actionem dividitur hereditas sive ex testamento sive ab intestato sive ex lege duodecim tabularum," &c. (Ulpian, Dig. 10. 2. 2.) This 'actio' then was the 'actio' between 'coheredes' who wished to divide the 'hereditas:' "namque coheredibus volentibus a communione discedere, necessarium videbatur aliquam actionem constitui, qua inter eos res hereditariae distribuerentur' (Gaius, Dig. 10. 2. 1). Now if Aebutius had commenced this action, he would by the very form of it have admitted that Caecina was a 'coheres.' But Aebutius denied that Caecina was a 'coheres;'

tusque qui neque animi neque consilii satis haberet, non putavit esse tanti hereditatem ut de civitate in dubium veniret; concessit, credo, Aebutio quantum vellet de Caesenniae bonis ut haberet: immo, ut viro forti ac sapienti dignum fuit, ita calumniam stultitiamque ejus obtrivit ac contudit. In possessione bonorum quum esset, et quum [ipse] sextulam suam nimium exaggeraret, nomine heredis arbitrum familiae herciscundae postulavit. Atque illis paucis diebus, posteaquam videt nihil se ab A. Caecina posse litium terrore abradere, homini Romae in foro denuntiat fundum illum, de quo ante dixi, cujus istum emptorem demonstravi fuisse mandatu Caesenniae, suum esse seque sibi emisse. Quid ais? istius ille fundus est, quem sine ulla controversia quadriennium, hoc est, ex quo tempore fundus veniit, quoad vixit, possedit Caesennia? Usus enim, inquit, ejus fundi et fructus, testamento viri, fuerat Caeseniae. Quum hoc novae litis genus tam malitiose intenderet, placuit Caecinae de amicorum sententia constituere, quo die in rem praesentem veniretur et de fundo Caecina moribus deduceretur. Colloquuntur. Dies ex utriusque commodo sumitur. Caecina cum amicis ad diem venit in castellum Axiam; ex quo loco fundus is de quo agitur non longe abest. Ibi certior fit a pluribus homines permultos, liberos atque servos, coegisse et armasse Aebutium. Quum id partim mirarentur, partim non crederent, ecce ipse Aebutius in castellum venit. Denuntiat Caecinae se armatos habere;

he affirmed that he could not take under the will, because he had lost the Roman 'civitas' through a Lex of Sulla. It is a certain conclusion then that 'postulavit' means 'Caecina postulavit.' 'Exaggeraret' of course means 'Aebutius exaggeraret;' and it is another certain conclusion that Caecina, 'qui postulavit,' was in possession of the 'hereditas:' for who could be in possession of it except the husband of the testatrix? The 'actio familiae herciscundae' could be brought by a 'coheres,' who was not in possession of his part of the 'hereditas;' but if the 'coheres' who was in possession denied that the plaintiff was a 'coheres,' he could exclude him by the 'exceptio' or plea, 'si in ea re qua de agitur praejudicium hereditati non fiat;' for as Ulpian says (Dig. 5. 3. 5. § 2) "eorum judiciorum, quae de hereditatis petitione sunt, ea auctoritas est ut nihil in praejudicium ejus judicii fieri debeat." If then Caecina had not been in possession, he would have acted foolishly instead of wisely by bringing the action 'familiae herciscundae.'

It follows that 'ipse' is not the true reading, and Schütz's correction of 'iste,' that is, Aebutius, is certain. The words 'ipse' and 'iste' have often been confounded by the copyists. But Schütz would also write 'iste paucis diebus,' instead of 'illis paucis diebus.' But there is no reason for this alteration, and the formula 'illis paucis diebus' is one of Cicero's expressions (see Vol. I. Verr. Act. i. c. 6). It means 'within those few days,' the time being computed from the 'postulatio' of Caecina. This passage is well explained by Keller. Klotz (Preface, p. 13) maintains 'ipse;' but he misunderstands the matter.

istius ille] Some of the editors have followed Lambinus in writing 'tuus ille;' but 'istius' is the MSS. reading and the true reading. 'Quid ais?' is not addressed to Aebutius directly, as Klotz properly remarks. It means: 'What would you say?' that is, 'What would any man say?' 'that this estate belongs to Aebutius?'

Usus enim,] See Vol. I. Verr. ii. 1. c. 9.

moribus deduceretur.] See Pro Tullio, § 20; c. 8 of this oration; and the Introduction to this oration.

abiturum eum non esse, si accessisset. Caecinae placuit et amicis, quoad videretur salvo capite fieri posse, experiri tamen. De castello descendunt, in fundum proficiscuntur. Videtur temere commissum; verum, ut opinor, hoc fuit caussae: tam temere istum re commissurum quam verbis minitabatur nemo putavit. VIII. Atque iste ad omnes introitus, qua adiri poterat non modo in eum fundum, de quo controversia erat, sed etiam in illum proximum de quo nihil ambigebatur, armatos homines opponit. Itaque primo quum in antiquum fundum ingredi vellet, quod ea proxime accedi poterat, frequentes armati obstiterunt. Quo loco depulsus Caecina, tamen qua potuit ad eum fundum profectus est, in quo ex conventu vim fieri oportebat; ejus autem fundi extremam partem oleae directo ordine definiunt. Ad eas quum accederetur, iste cum omnibus copiis praesto fuit, servumque suum nomine Antiochum ad se vocavit, et clara voce imperavit ut eum qui illum olearum ordinem intrasset occideret. Homo mea sententia prudentissimus Caecina, tamen in hac re plus mihi animi quam consilii videtur habuisse. Nam quum et armatorum multitudinem videret, et eam vocem Aebutii quam commemoravi audisset, tamen accessit propius, et jam ingrediens intra finem ejus loci, quem oleae terminabant, impetum armati Antiochi ceterorumque tela atque incursum refugit. Eodem tempore se in fugam conferunt una amici advocatique ejus metu perterriti, quemadmodum illorum testem dicere audistis. His rebus ita gestis, P. Dolabella praetor interdixit, ut est consuetudo, DE VI HOMINIBUS ARMATIS, sine ulla exceptione, tantum ut unde dejecisset restitueret. Restituisse se dixit. Sponsio facta est. Hac de sponsione vobis judicandum est.

IX. Maxime fuit optandum Caecinae, recuperatores, ut contro-

experiri tamen.] The common reading is 'experiri. Tum descendunt.' The Erfurt has 'tamen.' Klotz treats the common reading as absurd. Keller is not convinced that the text is better than the common reading; but I prefer it. 'Tum' and 'tamen' are often confounded.—'in quo ex conventu:' the reading 'ex quo,' which the recent editors have rejected, is not absurd, and it may be the true reading, as Keller supposes, for as he says, the 'vis' is the 'deductio' itself, which is more correctly said to be 'e fundo' than 'in fundo.' The words 'ex conventu' refer to the 'moribus deductio.'

8. *illorum testem*] In c. 1 he speaks of the witnesses of the other side; and in c. 9 he speaks of his own witnesses. Each party of course had his witnesses just as in modern practice, ready to support the side to which they belonged rather than to tell the truth. The orators argued upon the evidence, and handled the matter well; as Cicero in the next chapter asks the 'recuperatores' not to disbelieve Vetilius, because he was a man of indifferent character, but to believe what he said, when his evidence was unfavourable to the party whose witness he was. Witnesses were cross-examined, as we see from c. 10, 'ita eum placidum mollemque reddidi,' &c.

praetor interdixit,] See the Introduction. —'sponsio facta est.' See Pro P. Quintio, c. 8, note.

versiae nihil haberet, secundo loco, ut ne cum tam improbo homine, tertio, ut cum tam stulto haberet. Etenim non minus nos stultitia illius sublevat quam laedit improbitas. Improbus fuit, quod homines coegit, armavit, coactis armatisque vim fecit. Laesit in eo Caecinam, sublevat ibidem. Nam in eas ipsas res quas improbissime fecit testimonia sumpsit, et eis in caussa testimoniis utitur. Itaque mihi certum est, recuperatores, antequam ad meam defensionem meosque testes venio, illius uti confessione et testimoniis. Quid confitetur, atque ita libenter confitetur ut non solum fateri sed etiam profiteri videatur, recuperatores? Convocavi homines: coegi: armavi: terrore mortis ac periculo capitis ne accederes obstiti: ferro, inquit, ferro, et hoc dicit in judicio, te rejeci atque perterrui. Quid, testes quid aiunt? P. Vetilius, propinquus Aebutii, se Aebutio cum armatis servis venisse advocatum. Quid praeterea? fuisse complures armatos. Quid aliud? minatum esse Aebutium Caecinae. Quid ego de hoc teste dicam nisi hoc, recuperatores, ut ne idcirco minus ei credatis quod homo minus idoneus habetur, sed ideo credatis quod ex illa parte id dicit quod illi caussae maxime est alienum? A. Terentius, alter testis, non modo Aebutium sed etiam se pessimi facinoris arguit. In Aebutium hoc dicit, armatos homines fuisse; de se autem hoc praedicat, Antiocho, Aebutii servo, imperasse ut in Caecinam advenientem cum ferro invaderet. Quid loquar amplius de hoc homine? In quem ego hoc dicere, quum rogarer a Caecina, numquam volui, ne arguere illum rei capitalis viderer; de eo dubito nunc quomodo aut loquar aut taceam, quum ipse hoc de se juratus praedicet. Deinde L. Caelius non solum Aebutium cum armatis dixit fuisse compluribus, verum etiam cum advocatis perpaucis eo venisse Caecinam. X. De hoc ego teste detraham? cui aeque ac meo testi ut credatis postulo. P. Memmius secutus est, qui suum non parvum beneficium commemoravit in amicos Caecinae, quibus sese viam per fratris sui fundum dedisse dixit qua effugere possent, quum essent omnes metu perterriti. Huic ego testi gratias agam, quod et in re misericordem se praebuerit et in testimonio religiosum. A. Atilius

9. *idoneus*] Klotz, in his note, has collected examples of the use of 'idoneus,' such as 'idoneus auctor,' 'idoneus testis.' It means generally a man competent, fit for the purpose, whatever it may be, trustworthy, and honest.

se pessimi] The Erfurt MS. has 'saepissimi facinoris arguit,' which Garatoni correctly changed into 'se pessimi facinoris arguit.' But 'pessimi facinoris' may be an interpolation as Wunder supposes. Klotz has 'se ipse facinoris arguit.'

10. *detraham?*] So he says, c. 25: 'de hominibus non de jure civili detrahit.' It is to take from, that is, to disparage.

praebuerit] The reading of the Erfurt MS. The common reading is 'praebuit.' After 'malum minaretur' the Erfurt MS.

et ejus filius L. Atilius et armatos ibi fuisse et se suos armatos adduxisse dixerunt. Etiam hoc amplius: quum Aebutius Caecinae malum minaretur, ibi tum Caecinam postulasse ut moribus deductio fieret. Hoc idem P. Rutilius dixit, et eo libentius dixit, ut aliquo in judicio ejus testimonio creditum putaretur. Duo praeterea testes nihil de vi, sed de re ipsa atque emptione fundi dixerunt; P. Caesennius, auctor fundi, non tam auctoritate gravi quam corpore, et argentarius Sex. Clodius, cui nomen est Phormio, nec minus niger nec minus confidens quam ille Terentianus est Phormio, nihil de vi dixerunt, nihil praeterea quod ad vestrum judicium pertineret. Decimo vero loco testis exspectatus et ad extremum reservatus dixit, senator populi Romani, splendor ordinis, decus atque ornamentum judiciorum, exemplar antiquae religionis, Fidiculanius Falcula; qui quum ita vehemens acerque venisset ut non modo Caecinam perjurio suo laederet, sed etiam mihi videretur irasci, ita eum placidum mollemque reddidi ut non auderet, sicut meministis, iterum dicere, quot millia fundus suus abesset ab Urbe. Nam quum dixisset minus ɪↃↃↃ, populus cum risu acclamavit, 'ipsa esse.' Meminerant enim omnes quantum in Albiano judicio accepisset. In eum quid dicam nisi id quod negare non possit? venisse in consilium publicae quaestionis, quum ejus consilii judex non esset; et in eo consilio, quum

adds 'hoc est mortem minaretur,' which absurd interpolation both Klotz and Baiter have retained in the text. Klotz defends it in a manner that is ridiculous; and, what is most ridiculous and most untrue, he affirms that there could be no 'justus metus,' fear in the legal sense, unless he was threatened with death, which is completely false. He insists also on the rhetorical beauty of these words; wherein it is hard to agree with him.

auctor fundi] 'The vendor of the estate.' P. Caesennius was heres (c. 4) and he sold the estate (quum esset haec auctio hereditaria constituta, c. 5). See Vol. I. Verr. ii. 5. c. 22.—'nomen:' 'cognomen,' T., Baiter.

Terentianus est Phormio,] The Phormio of Terence is his best play, and the character of the parasite Phormio is sketched with great skill. Cicero's allusions to Terence and the quotations from him are very numerous. Geta says of Phormio (Phormio, i. 2. 72): "Est parasitus quidam Phormio, Homo confidens, qui illum di omnes perduint." It has been supposed that Cicero calls him 'niger' because parasites were represented on the stage with black faces, and Klotz quotes the passage in proof of this. I don't think that this is the meaning of 'niger' in this passage. He is called 'niger' because of his badness. Horace (Sat. i. 4. v. 85) says: "Hic niger est; hunc tu Romane caveto."

Decimo vero loco] Klotz conjectures that in trials before Recuperatores only ten witnesses were allowed, a conclusion which is certainly not justified by this passage; for we do not know that only ten were allowed because only ten are mentioned here. There are, however, some other reasons in support of his conjecture (Klotz, p. 487).

minus ɪↃↃↃ,] The readings are 'minus abesse LIII,' and 'minus habere LIII.' Keller, who writes 'minus ɪↃↃↃ,' has a very ingenious note, in which he shows that ɪↃↃↃ might easily become LIII. The words 'habere' and 'abesse' seem both to be spurious, for the humour lies in the confusion between 'passus' and 'sestertii,' which is entirely lost if either 'habere' or 'abesse' is in the text. Cicero charges the man with having been bribed when he was a judex in the trial of Statius Albianus Oppianicus (Pro Cluentio, c. 31). But see Pro Cluentio, c. 37.

caussam non audisset et potestas esset ampliandi, dixisse SIBI LIQUERE; quum incognita re judicare voluisset, maluisse condemnare quam absolvere; quum, si uno minus damnarent, condemnari reus non posset, non ad cognoscendam caussam sed ad explendam damnationem praesto fuisse. Utrum gravius aliquid in quempiam dici potest quam ad hominem condemnandum, quem numquam vidisset neque audisset, adductum pretio esse? An certius quidquam objici potest quam quod is cui objicitur ne nutu quidem infirmare conatur? Verumtamen is testis, ut facile intelligeretis eum non adfuisse animo, quum ab illis caussa ageretur testesque dicerent, sed tantisper de aliquo reo cogitasse, quum omnes ante eum dixissent testes armatos cum Aebutio fuisse complures, solus dixit non fuisse. Visus est mihi primo veterator intelligere praeclare quid caussae optaret, et tantummodo errare, quod omnes testes infirmaret, qui ante eum dixissent; quum subito, ecce idem qui solet, suos solos servos armatos fuisse dixit. Quid huic tu homini facias? nonne concedas interdum ut excusatione summae stultitiae summae improbitatis odium deprecetur? XI. Utrum, recuperatores, his testibus non credidistis, quum quid liqueret non habuistis?—at controversia non erat quin verum dicerent—an in coacta multitudine, in armis, in telis, in praesenti metu mortis perspicuoque periculo caedis dubium vobis fuit inesse vis aliqua videretur necne? Quibus igitur in rebus vis intelligi potest, si in his non intelligetur? An vero illa defensio vobis praeclara visa est: Non dejeci, sed obstiti?

sibi liquere;] This is explained by 'maluisse condemnare quam absolvere.' He had made up his mind to convict without having heard the evidence. 'Non liquere' was the judicial form which was used when a judex could not decide whether he should acquit or condemn, and there was accordingly an 'ampliatio' or adjournment (Vol. I. Verr. ii. 1. c. 9). Compare Pro Cluentio, c. 28, and Gellius, xiv. 2.

si uno minus] The judices were thirty-two, as appears from the oration Pro Cluentio (c. 27); and it was necessary to have a majority to get a conviction.

quid caussae optaret,] This is the reading of the Erfurt and of other MSS. There is also a reading 'quid caussa optaret;' which expression does not appear to occur elsewhere. But as Keller remarks, a 'caussa' is said 'requirere,' 'desiderare,' 'postulare,' 'poscere,' and 'flagitare;' and why not 'optare?' Baiter has in his text 'quid caussae obstaret,' a conjecture of Halm's which seems not to agree with the rest of the sentence. It may be doubted whether 'quid caussae optaret' is Latin. Klotz explains it thus: 'Falcula saw what he had to wish in respect to the case, and for that reason made his declaration which varied from that of the rest.' He compares as to the use of the dative the passage in c. 9: "quod illi caussae maxime est alienum."

idem qui solet,] This is explained to mean, 'he returns to his old habits, he is the same man still.'—'quid huic tu—facias:' this is quoted by Gellius (vi. 16), with the omission of the word 'tu.' It is also Latin to say 'quid hoc homine faciatis.'

11. *quid liqueret non habuistis?*] 'When you could not come to a determination,' 'when you could not agree on a verdict,' and accordingly declared the cause to be adjourned.

Non dejeci, sed obstiti?] See the Introduction.

Non enim te sum passus in fundum ingredi, sed armatos homines opposui, ut intelligeres, si in fundo pedem posuisses, statim tibi esse pereundum. Quid ais? is qui armis perterritus, fugatus, pulsus est, non videtur esse dejectus? Posterius de verbo videbimus: nunc rem ipsam ponamus quam illi non negant, et ejus rei jus actionemque quaeramus.

Est haec res posita, quae ab adversario non negatur: Caecinam, quum ad constitutam diem tempusque venisset, ut vis ac deductio moribus fieret, pulsum prohibitumque esse vi coactis hominibus et armatis. Quum hoc constet, ego homo imperitus juris, ignarus negotiorum ac litium, hanc puto me habere actionem ut per interdictum meum jus teneam atque injuriam tuam persequar. Fac in hoc errare me nec ullo modo posse per hoc interdictum id assequi quod velim; te uti in hac re magistro volo. Quaero, sitne aliqua hujus rei actio an nulla. Convocari homines propter possessionis controversiam non oportet, armari multitudinem juris retinendi caussa non convenit, nec juri quidquam tam inimicum quam vis, nec aequitati quidquam tam infestum est quam convocati homines et armati. XII. Quod quum ita sit, resque ejusmodi sit ut in primis a magistratibus animadvertenda esse videatur, iterum quaero, sitne ejus rei aliqua actio an nulla. Nullam esse dices? Audire cupio. Qui in pace et otio, quum manum fecerit, copias pararit, multitudinem hominum coegerit, armarit, instruxerit, homines inermos, qui ad constitutum experiundi juris gratia venissent, armis, viris, terrore periculoque mortis reppulerit, fugarit, averterit, hoc dicat: Feci equidem quae dicis omnia: et ea sunt et turbulenta et temeraria et periculosa: quid ergo est? impune feci: nam quid agas mecum ex jure civili ac praetorio non habes. Itane vero, recuperatores; hoc vos audietis, et apud vos dici patiemini saepius? Quum majores nostri tanta diligentia prudentiaque fuerint, ut omnia

jus actionemque] 'The law and the form of action or proceeding.' He says a few lines further on, "hanc puto me habere actionem," &c.

12. *manum fecerit,*] Cicero writes both 'manum facere,' and 'manum comparare,' 'to get a body of men together.'—'ad constitutum venire' means 'to come to a certain place at a fixed time,' as in this case 'ut moribus deductio fieret.' Cicero has the expression 'ad constitutum' in a letter to Atticus. He says in a letter to Marius (Ad Fam. vii. 4), "quare si quod constitutum cum podagra habes." Compare Pro P. Quintio, c. 5.

jure civili ac praetorio] One would suppose that 'ac' ought to be 'aut;' but no MSS. variation is noted. 'Jus civile' in its largest sense means all the law of the Romans; but here it is opposed to 'jus praetorium,' and has a narrower sense. The difference between the 'actiones' founded on the Jus Civile, in its narrower sense, and the 'actiones' which had a different origin, is explained in Vol. I. Excursus, Edicta Magistratuum. Savigny (Das Recht des Besitzes, § 7) explains these words thus: "thou hast neither a Vindicatio nor an Interdict." The 'vindicatio' was by the Jus Civile: the Interdict by the Jus Praetorium.

omnium non modo tantarum rerum, sed etiam tenuissimarum jura statuerint persecutique sint, ut hoc genus unum vel maximum praetermitterent, ut, si qui me exire domo mea coegisset armis, haberem actionem, si qui introire prohibuisset, non haberem? Nondum de Caecinae caussa disputo, nondum de jure possessionis nostrae loquor: tantum de tua defensione, C. Piso, queror. Quando ita dicis et ita constituis: si Caecina, quum in fundo esset, inde dejectus esset, tum per hoc interdictum eum restitui oportuisse; nunc vero dejectum nullo modo esse inde ubi non fuerit, hoc interdicto nihil nos assecutos esse; quaero, si te hodie domum tuam redeuntem coacti homines et armati non modo limine tectoque aedium tuarum sed primo aditu vestibuloque prohibuerint, quid acturus sis. Monet amicus meus te, L. Calpurnius, ut idem dicas, quod ipse antea dixit, injuriarum. Quid ad caussam possessionis, quid ad restituendum eum quem oportet restitui, quid denique ad jus civile aut ad actoris notionem atque animadversionem ages injuriarum? Plus tibi ego largiar. Non solum egeris, verum etiam

ut hoc genus] Lambinus omitted this 'ut;' and Baiter has followed him. Lambinus says that he has made the passage clear by this omission. Hotmann supposes that this 'ut' is to be pronounced as an exclamation, and marks great surprise. It is a kind of half question: 'that they should omit this single case, which is even the chief of all?'

queror] The Erfurt MS. has 'quaero,' which Klotz and Baiter have followed.

Quando] 'Quoniam:' Baiter; 'Quum,' Klotz.—'injuriarum:' that is, 'injuriarum acturus sis.' Ulpian (Dig. 47. 10. 5) says: "Lex Cornelia de injuriis competit ei qui injuriarum agere volet ob eam rem quod se pulsatum, verberatumve, domumve suam vi introitam esse dicat." The interpretation of the Lex was that the 'domus' must not be taken to be only a house of which the injured person was owner, but his 'domicilium' or dwelling-place. Accordingly Ulpian says: "quare sive in propria domo quis habitaverit, sive in conducta, vel gratis, sive hospitio receptus, haec lex locum habebit." Cicero argues that this 'actio injuriarum' would only give a man compensation for the violence done to his person, and would not determine the question of possession.

Quid ad] Ernesti wrote 'quid id ad;' and Baiter has followed him. 'Jus civile' in this passage is opposed to Criminal law, as Savigny (Besitz, § 7) shows. He says: "notwithstanding all the difficulty of this passage, it is clear that Cicero means to say that the Injuriarum actio stands in no connexion with the Restitution of Possession, and consequently in no connexion with the Jus Civile. He seems accordingly to place the Interdict in the Jus Civile. But since Injuriae, of which he here speaks, was a Crimen Publicum after the enactment of the Lex Cornelia, so it is manifest that the Civil law is here opposed to the Criminal law, and in this sense the whole Edict belongs to the Jus Civile; but for the other signification of Jus Civile no proof can be derived from this passage, nay, even shortly before Cicero himself has used the expression in this other sense (quod agas mecum ex jure civili ac praetorio non habes)." There is a difficulty in the expression 'ad actoris notionem atque animadversionem.' 'Actor' is the plaintiff; but neither the word 'notio' nor 'animadversio' applies to a plaintiff. 'Notio' is sometimes equivalent to 'cognitio,' and 'jurisdictio' (Dig. 50. 16. 99), and 'animadversio' is also a term which applies to the praetor, as in Dig. 47. 10. 15. § 28: "Si quis adversus ea fecerit, . . . animadvertam:" and Cicero has just said, "ut in primis a magistratibus animadvertenda esse videatur." There is an error in some of these words in the text, or in all; but it is impossible to say what the text should be. Baiter has placed 'aut ad actoris — animadversionem' in brackets. Savigny thinks that the passage is clear, if 'actoris' is omitted, as Garatoni proposed. Klotz thinks that 'actoris' is quite necessary; and he explains it in his way.

condemnaris licet; numquid magis possidebis? actio enim injuriarum non jus possessionis assequitur, sed dolorem imminutae libertatis judicio poenaque mitigat. XIII. Praetor interea, Piso, tanta de re tacebit? quemadmodum te restituat in aedes tuas non habebit? Qui dies totos aut vim fieri vetat aut restitui factam jubet, qui de fossis, de cloacis, de minimis aquarum itinerumque controversiis interdicit, is repente obmutescet; in atrocissima re quod faciat non habebit; et, C. Pisone domo tectisque suis prohibito, prohibito, inquam, per homines coactos et armatos, praetor quemadmodum more et exemplo opitulari possit non habebit? Quid enim dicet, aut quid tu tam insigni accepta injuria postulabis? 'Unde vi prohibitus sis,' nemo umquam interdixit: novum est, non dico inusitatum, verum omnino inauditum. 'Unde dejectus?' Quid proficies, quum illi hoc respondebunt tibi quod tu nunc mihi: armatos se tibi obstitisse ne in aedes accederes; dejici porro nullo modo potuisse qui non accesserit? Dejicior ego, inquis, si quis meorum dejicitur. Omnino. Jam bene agis. A verbis enim recedis et aequitate uteris. Nam verba ipsa si sequi volumus, quo modo tu dejiceris, quum servus tuus dejicitur? Verum ita est, uti dicis. Te dejectum debeo intelligere, etiamsi tactus non fueris. Nonne? Age nunc, si ne tuorum quidem quisquam loco motus erit atque omnes in aedibus asservati ac retenti, tu solus prohibitus et a tuis aedibus vi atque armis perterritus; utrum hanc actionem habebis qua nos usi sumus, an aliam quampiam, an omnino nullam? Nullam esse actionem dicere in re tam insigni tamque atroci neque prudentiae neque auctoritatis tuae est. Alia si qua

13. *dies totos*] 'All day long' or 'daily.' Matters which required the assistance of the praetor occurred daily, such as disputes about ditches, sewers, the use of water, and ways. "Certis igitur ex caussis Praetor aut Proconsul principaliter auctoritatem suam finiendis controversiis praeponit, quod tum maxime facit cum de possessione aut quasi possessione inter aliquos contenditur: et in summa aut jubet aliquid fieri aut fieri prohibet: formulae autem verborum et conceptiones quibus in ea re utitur, interdicta decretave vocantur" (Gaius iv. 139).

quod faciat] 'quid faciat:' all Keller's MSS. This variation of 'quod faciat' and 'quid faciat' occurs very often.

Unde vi prohibitus sis, &c.] This means, 'no praetor ever made an interdict in the terms Unde vi prohibitus sis.' I see no objection to the MSS. reading. Baiter has it thus, '"Unde vi prohibitus?" Sic nemo unquam,' &c. Graevius added the note of interrogation from the Erfurt; and there is the authority of one MS. for 'sic.' The words 'Unde dejectus?' seem to be in favour of Baiter's text: but I see no reason for following him.

dejicitur.] 'dejicitur omnino. Jam' &c.: Baiter. This is a bad punctuation, which was corrected by Gruter long ago. A man who was in possession was 'dejectus,' if his slave or his agent, or his tenant (colonus), who held the land for him, was 'dejectus,' because their so-called possession was the possession of the owner (dominus), as Ulpian explains (Dig. 43. 16. 1).—'perterritus:' 'proterritus,' Klotz, Baiter.—'prudentiae:' this means knowledge of the law, as Klotz rightly explains it; and 'auctoritatis' is the character.—'si qua forte:' 'si quae forte,' Klotz, Baiter.

forte est quae nos fugerit, dic quae sit: cupio discere. Haec si est qua nos usi sumus, te judice vincamus necesse est. Non enim vereor, ne hoc dicas, in eadem caussa, eodem interdicto, te oportere restitui, Caecinam non oportere. Etenim cui non perspicuum est ad incertum revocari bona, fortunas, possessiones omnium, si ulla ex parte sententia hujus interdicti deminuta aut infirmata sit? si auctoritate virorum talium vis armatorum hominum judicio approbata videatur, in quo judicio non de armis dubitatum, sed de verbis quaesitum esse dicatur? Isne apud vos obtinebit caussam suam qui se ita defenderit: Ejeci ego te armatis hominibus, non dejeci? ut tantum facinus non in aequitate defensionis, sed in una littera latuisse videatur. Hujusce rei vos statuetis nullam esse actionem, nullum experiundi jus constitutum, qui obstiterit armatis hominibus,

ejeci ego te] Baiter follows Keller's conjecture, and has 'Rejeci ego te,' &c. Keller's examination of this passage is very ingenious (p. 393, &c.). He observes that in c. 23 'ejectus es, non dejectus' occurs; and in c. 29 'non dejeci, sed ejeci;' and there is no variation in the MSS., so far as he knows, in any of these three passages. Cicero's remark about the 'una littera' seems also to be in favour of the MSS. reading. If this reading is right, we must admit that 'ejicere' here has the meaning of 'prohibere,' 'accedere non sinere;' and that as 'dejicere' means to expel a man from a place in which he is (ex loco), 'ejicere' must mean to repel a man from a place (ab loco) to which he is approaching. But, as Keller remarks, there is no authority for this opposition of meaning between 'de' and 'ex' in any compound words. Cicero himself (c. 17) explains the difference between 'ejectus' and 'dejectus,' and in a way which is quite consistent with the form of the words. In c. 28 a certain jurisconsult maintains that a man cannot be "dejectum nisi ex eo loco in quo fuerit;" and Keller asks if this remark does not apply more strongly to the verb 'ejicere?' Again, in c. 28, 29, and wherever the word 'dejicere' is used in the very narrow sense to which Piso limits it, the verb is used with the preposition 'ex.' Keller also refers to the discussion in c. 30; and he remarks that there were three words, 'ejicere,' 'dejicere,' 'prohibere;' that the meaning of the first and the third was clear, 'ejicere' being applied to the ejectment of a man from a house or a piece of land on which he was, and 'prohibere' being applied to the preventing a man from entering a house or piece of land. Keller adds: "on the other hand, there was a dispute about the verb *dejicere*, whether it had the same meaning as *ejicere*, which Cicero says that Piso maintained (c. 11. 13. 14. 17. 23. 27—31), or whether it had a larger meaning, so as to comprehend the meaning of both the words, 'ejicere' and 'prohibere;' as Cicero very acutely maintains." It must also be observed that the Praetors in former times used both 'ejicere' and 'detrudere' in this Interdict; and this, as Keller remarks, confirms the meaning which he gives to 'ejicere.' (See c. 17.)

Keller's conclusion is that Cicero wrote 'rejeci' and 'rejectus.' He refers also to chapter 9, where we find 'te rejeci atque perterrui;' to c. 14, where there is, 'qui ingredientem reppulerit;' and to c. 17, where there is, 'reppulisse dicis.'

He further observes, that both this oration and many others of Cicero are full of very old blunders, and that the MSS., with the exception of one Palimpsest, were written in the fourteenth and fifteenth centuries, and that for this reason their agreement is not very strong evidence. There is one ground for thinking, says Keller, that the true reading which he defends (rejicere) had not disappeared from all the MSS. which existed in the middle ages, for the edition of Camerarius (c. 23) has the reading 'rejectus;' and Keller concludes that this reading is from some MSS. and not a conjecture, because the editor has left the common reading in the other two passages (c. 13 and 29).

This is the substance of Keller's remarks, and they are instructive, and cannot be given in less space.

qui obstiterit] There is a reading, 'quod obstiterit,' which Keller approves. Probably there is some error in the text, for there

qui multitudine coacta non introitu sed omnino aditu quempiam prohibuerit? XIV. Quid ergo? hoc quam habet vim, ut distare aliquid aut ex aliqua parte differre videatur, utrum, pedem quum intulero atque in possessione vestigium fecero, tum expellar ac dejiciar, an eadem vi atque iisdem armis mihi ante occurratur, ne non modo intrare, verum aspicere aut aspirare possim? Quid hoc ab illo differt, ut ille cogatur restituere qui ingressum expulerit, ille qui ingredientem reppulerit non cogatur? Videte, per deos immortales, quod jus nobis, quam conditionem vobismetipsis, quam denique civitati legem constituere velitis. Hujusce generis una est actio per hoc interdictum quo nos usi sumus constituta. Ea si nihil valet, aut si ad hanc rem non pertinet, quid negligentius aut quid stultius majoribus nostris dici potest, qui aut tantae rei praetermiserint actionem, aut eam constituerint quae nequaquam satis verbis caussam et rationem juris amplecteretur? Hoc est periculosum dissolvi hoc interdictum: est captiosum omnibus rem ullam constitui ejusmodi quae, quum armis gesta sit, rescindi jure non possit. Verumtamen illud est turpissimum, tantae stultitiae prudentissimos homines condemnari, ut vos judicetis hujus rei atque actionis in mentem majoribus nostris non venisse.

Queramur, inquit, licet; tamen hoc interdicto Aebutius non tenetur.—Quid ita?—Quod vis Caecinae facta non est.—Dici in hac caussa potest, ubi arma fuerint, ubi coacta hominum multitudo, ubi instructi et certis locis cum ferro homines collocati, ubi minae, pericula terroresque mortis, ibi vim non fuisse?—Nemo, inquit, occisus est neque saucius—Quid ais? quum de possessionis controversia et de privatorum hominum contentione juris loquamur, tu vim negabis factam, si caedes et occisio facta non erit? Ego exercitus maximos saepe pulsos et fugatos esse dico terrore ipso impetuque hostium sine cujusquam non modo morte, verum etiam vulnere.

XV. Etenim, recuperatores, non ea sola vis est quae ad corpus

is no direct antecedent to 'qui;' but there is no real difficulty, for it refers to 'Isne apud vos.'

14. *captiosum*] One sense of 'captio' is fraud, that by which any one 'capitur,' is caught. 'Captiosus' is that which is adapted to deceive, to take a man in, as we say. In Pro Rosc. Com. c. 10 there occurs 'societatem captiosam.'

vos judicetis &c.] Klotz and Baiter have, 'hujus rei jus atque actionem in mentem majoribus nostris non venisse;' after Erf. and T. See Vol. i. Divin. c. 13.

15. *vis*] Cicero's remark is true. 'Vis' is either the employment of absolute force, as when one man overpowers another; or it is threat, by which a man works on the will and raises in another the feeling of fear. "The opposition between the two kinds of Vis is made very clear in the case of loss of Possession, which can be effected either through absolute force or by threat: in the

nostrum vitamque pervenit, sed etiam multo major ea, quae periculo mortis injecto formidine animum perterritum loco saepe et certo de statu demovet. Itaque saucii saepe homines, quum corpore debilitantur, animo tamen non cedunt neque eum relinquunt locum quem statuerint defendere: at alii pelluntur integri; ut non dubium sit quin major adhibita vis ei sit, cujus animus sit perterritus, quam illi cujus corpus vulneratum sit. Quod si vi pulsos dicimus exercitus esse eos, qui metu ac tenui saepe suspicione periculi fugerunt, et si non solum impulsu scutorum neque conflictu corporum neque ictu cominus neque conjectione telorum, sed saepe clamore ipso militum aut instructione aspectuque signorum magnas copias pulsas esse et vidimus et audivimus, quae vis in bello appellatur, ea in otio non appellabitur? et quod vehemens in re militari putatur, id leve in juri civili judicabitur? et quod exercitus armatos movet, id advocationem togatorum non videbitur movisse? et vulnus corporis magis istam vim quam terror animi declarabit? et sauciatio quaeretur, quum fugam factam esse constabit? Tuus enim testis hoc dixit, metu perterritis nostris advocatis locum se qua effugerent demonstrasse. Qui non modo ut fugerent, sed etiam ipsius fugae tutam viam quaesiverunt, his vis adhibita non videbitur? Quid igitur fugiebant? propter metum. Quid metuebant? vim videlicet. Potestis igitur principia negare, quum extrema conceditis? Fugisse perterritos confitemini: caussam fugae dicitis eamdem quam omnes intelligimus, arma, multitudinem hominum, incursionem atque impetum armatorum. Haec ubi conceduntur esse facta, ibi vis facta negabitur?

XVI. At vero hoc quidem jam vetus est et majorum exemplo multis in rebus usitatum, quum ad vim faciendam veniretur, si quos armatos quamvis procul conspexissent, ut statim testificati discederent, optime sponsionem facere possent, NI ADVERSUS EDICTUM PRAETORIS VIS FACTA ESSET. Itane vero? scire esse armatos

first case it is a Dejectio; in the second, a compulsory surrender of Possession. For the first case, the Interdictum de Vi is established; for the second, the Actio quod metus caussa (Dig. 4. 2. 9; 43. 16. 5)." (Savigny, System, &c. iii. 101.) The Edict originally was in this form, "Quod vi metusque caussa gestum erit, ratum non habebo." But afterwards the word 'vi' was omitted (Dig. 4. 2. 1).

statuerint defendere] The Erfurt and other MSS. have 'statuerunt,' and also 'relinquent' for 'relinquunt;' both which readings Baiter has in his text. There is no objection to them.

advocationem togatorum] The 'advocatio' is the body of the 'advocati,' of the unarmed men who were invited to accompany Caecina (metu perterritis nostris advocatis).

16. *vetus est*] See Pro P. Quintio, c. 17, note.

ut statim] This depends on 'usitatum.' Perhaps 'et' has been omitted between 'discederent' and 'optime sponsionem:' but 'et' is not necessary.

ni adversus] See Vol. I. Verr. ii. 5. c. 54.

satis est ut vim factam probes; in manus eorum incidere non est satis? Aspectus armatorum ad vim probandam valebit; incursus et impetus non valebit? qui abierit facilius sibi vim factam probabit quam qui effugerit? At ego hoc dico: si, ut primo in castello Caecinae dixit Aebutius se homines coegisse et armasse, neque illum si eo accessisset abiturum, statim Caecina discessisset, dubitare vos non debuisse quin Caecinae facta vis esset: si vero, simulac procul conspexit armatos, recessisset, eo minus dubitaretis. Omnis enim vis est quae periculo aut decedere nos alicunde cogit aut prohibet accedere. Quod si aliter statuetis, videte ne hoc vos statuatis, qui vivus discesserit, ei vim non esse factam; ne hoc omnibus in possessionum controversiis praescribatis ut confligendum sibi et armis decertandum putent; ne, quemadmodum in bello poena ignavis ab imperatoribus constituitur, sic in judiciis deterior caussa sit eorum qui fugerint quam qui ad extremum usque contenderint. Quum de jure et legitimis hominum controversiis loquimur, et in his rebus vim nominamus, pertenuis vis intelligi debet. Vidi armatos quamvis paucos: magna vis est. Decessi unius hominis telo perterritus: dejectus detrususque sum. Hoc si ita statuetis, non modo non erit cur depugnare quisquam posthac possessionis caussa velit, sed ne illud quidem, cur repugnare. Sin autem vim sine caede, sine vulneratione, sine sanguine, nullam intelligetis, statuetis homines possessionis cupidiores quam vitae esse oportere. XVII. Age vero, de vi te ipsum habebo judicem, Aebuti. Responde, si tibi videtur. In fundum Caecina utrum tandem noluit an non potuit accedere? Quum te obstitisse et reppulisse dicis, certe hunc voluisse concedis. Potes igitur dicere non ei vim fuisse impedimento, cui, quum cuperet eoque consilio venisset, per homines coactos non sit licitum accedere? Si enim id quod maxime voluit nullo modo potuit, vis profecto quaedam obstiterit necesse est, aut tu dic, quamobrem quum vellet accedere non accesserit. Jam vim factam negare non potes: dejectus quemadmodum sit qui non accesserit, id quaeritur. Demoveri enim et depelli de loco necesse est eum qui dejiciatur: id autem accidere ei qui potest, qui omnino in eo loco, unde se dejectum esse dicit, numquam fuit? Quid, si fuisset et ex eo loco metu permotus fugisset, quum armatos vidisset, diceresne esse dejectum? Opinor. An tu qui tam diligenter et tam callide verbis controversiam non aequitate dijudicas, et jura non utilitate communi sed litteris exprimis, poterisne dicere,

illum si eo] 'eum si illo:' Baiter.
nullam intelligetis,] Klotz reads 'intelligitis, statuitis.'

dejectum esse eum qui tactus non erit? Quid, detrusum dices? nam eo verbo antea praetores in hoc interdicto uti solebant. Quid ais? potestne detrudi quisquam qui non attingitur? Nonne, si verbum sequi volumus, hoc intelligamus necesse est, eum detrudi cui manus afferantur? Necesse est, inquam, si ad verbum rem volumus adjungere, neminem statui detrusum qui non adhibita vi manu demotus et actus praeceps intelligatur. Dejectus verbo qui potest esse quisquam, nisi in inferiorem locum de superiore motus? Potest pulsus, fugatus, ejectus denique: illud vero nullo modo potest, dejectus esse quisquam, non modo qui tactus non sit, sed ne aequo quidem et plano loco. Quid ergo? hoc interdictum putamus eorum esse caussa compositum qui se praecipitatos ex locis superioribus dicerent—eos enim vere possumus dicere esse dejectos—an quum voluntas et consilium et sententia interdicti intelligatur, impudentiam summam aut stultitiam singularem putabimus in verborum errore versari, rem et caussam et utilitatem communem non relinquere solum sed etiam prodere?

XVIII. An hoc dubium est quin neque verborum tanta copia sit, non modo in nostra lingua, quae dicitur esse inops, sed ne in alia quidem ulla, res ut omnes suis certis ac propriis vocabulis nominentur, neque vero quidquam opus sit verbis, quum ea res cujus caussa verba quaesita sint intelligatur? Quae lex, quod senatus consultum, quod magistratus edictum, quod foedus aut pactio, quod, ut ad privatas res redeam, testamentum, quae judicia aut stipulationes aut pacti et conventi formula non infirmari ac convelli potest, si ad verba rem deflectere velimus, consilium autem eorum qui scripserunt et rationem et auctoritatem relinquamus? Sermo hercule et familiaris et quotidianus non cohaerebit, si verba inter nos aucupabimur. Denique imperium domesticum nullum

17. *detrusum dices?*] 'detrusum dicesne?' Baiter, Klotz, from the Turin Palimpsest. It appears that changes were made in the formal words from time to time. 'Detrudere' was once in fashion. See Pro P. Quintio, c. 6, 'detruditur;' and there are instances even in the Digest of the existence of this old technical term (Dig. 41. 3. 4. § 27).

adjungere,] If this reading is right, the text means, 'if we would add the fact to the word,' that is, if we give to the word its plain signification. There is a reading 'attingere.' Compare the use of 'adjungere' in Pro Rosc. Am., c. 31.—'dejectus verbo:' the reading of the Turin Pal., which Klotz has admitted. It means, as he says, 'dem Worte nach,' or 'literally.' The common reading is 'vero;' which may be right.—'illud vero:' 'illud' is explained by 'dejectus esse quisquam.'—'ne in aequo:' Klotz, Baiter, following the Turin Pal.: but I doubt if it is right.

18. *inops,*] So the Latin language was said to be, and it is poor in some respects, but not in legal terms or words adapted to the business of life. As to terms of philosophy it is poor, as Lucretius (iii. 260) says:

"—— rationem reddere aventem
Abstrahit invitum patrii sermonis egestas."

Cicero himself did not think meanly of the Latin language (De Fin. 1. 3).

judicia] He means the 'formulae judiciorum.'

aucupabimur] This word is difficult to

erit, si servulis hoc nostris concesserimus ut ad verba nobis obediant, non ad id quod ex verbis intelligi possit obtemperent. Exemplis nunc uti videlicet mihi necesse est harum rerum omnium. Non occurrit uni cuique vestrum aliud alii in omni genere exemplum, quod testimonio sit, non ex verbis aptum pendere jus, sed verba servire hominum consiliis et auctoritatibus? Ornate et copiose L. Crassus, homo longe eloquentissimus, paullo ante quam nos in forum venimus, judicio centumvirali hanc sententiam defendit, et facile, quum contra eum prudentissimus homo Q. Mucius diceret, probavit omnibus M'. Curium, qui heres institutus esset ita, 'mortuo postumo filio,' quum filius non modo non mortuus, sed ne natus quidem esset, heredem esse oportere. Quid, verbis satis hoc cautum erat? minime. Quae res igitur valuit? voluntas, quae si tacitis nobis intelligi posset, verbis omnino non uteremur; quia non potest, verba reperta sunt, non quae impedirent, sed quae indicarent voluntatem. XIX. Lex usum et auctoritatem fundi jubet esse

translate. It means to look to the words and not to the meaning of the whole; and the same thing is expressed by Paulus (Dig. 10. 4. 19) when he says: "non oportere jus civile calumniari neque verba captari, sed qua mente quid diceretur animadvertere convenire." 'Captare verba' expresses the same thing as 'aucupari;' but 'aucupari' is a metaphor from bird-catching. Cicero, speaking of a 'leguleius,' a pettyfogger, calls him 'auceps syllabarum.'

Exemplis nunc uti] This is said ironically.

L. Crassus,] See Vol. I. Divin. c. 8, and Verr. ii. 3. c. 1. Q. Mucius is Q. Mucius Scaevola the Pontifex. The case of M'. Curius is also stated by Cicero (De Or. i. c. 39). Something is said of the jurisdiction of the court of Centumviri in Vol. I. p. 46, and in De Or. i. c. 38. A 'postumus' is a child born after the father's testament has been made, even if he was born in the father's lifetime; or as Gellius (ii. 16) says: "Postuma proles non eum significat qui patre mortuo, sed qui postremo loco natus est." It was a Roman practice in testaments to name a person to take as heres in the case of another who was named before him not taking the 'hereditas,' and this was called 'substitutio' (Gaius ii. 174, &c.). Gaius observes that all that he has said about substitutions in the place of 'liberi impuberes' applies also to 'postumi.' The case in the text is this—M'. Curius was instituted heres in the testament (heres institutus) on the condition of a posthumous son dying before he attained full age, or as it is expressed (De Or. i. 39), 'ante quam in suam tutelam venisset.' In order that the substitution should take effect, it was necessary that a posthumous son should be born, and should die before he was 'pubes;' but if the testator under these circumstances intended to give his property to M'. Curius, it is plain that if no son was born he intended that he should have it. He wished to provide for a son first; and if there was no son, or if he did not attain the legal age, the testator gave the property to another.

non modo non mortuus,] Ernesti objected to the double 'non,' though it appears that all the MSS. have it. But I think that Ernesti is right, and the 'non' before 'mortuus' ought to be omitted.

19. *Lex usum*] Gaius says (ii. 42): "Mobilium quidem rerum anno completur (*usucapio*), fundi vero et aedium biennio: et ita lege xii. tabularum cautum est.' Compare Ulpian, Frag. xix. § 8, Cicero, Top. c. 4; and Gaius, ii. 204. A man who acquired a 'res mancipi,' a piece of land, for instance, without the form of 'mancipatio' or 'in jure cessio,' could only acquire the Quiritarian or complete ownership by use and enjoyment for two years. According to Cicero the Lex only mentioned a 'fundus,' but he contends that the term 'fundus' comprised 'aedes.' In the passage in the Topica the 'et' between 'usus' and 'auctoritas' is wanting. The expression in the text seems rather singular. It seems to mean: "The Law of the Twelve Tables de-

biennium. At utimur eodem jure in aedibus, quae in lege non appellantur.—Si via sit immunita, jubet qua velit agere jumentum. Potest hoc ex verbis intelligi, licere, si via sit in Brutiis immunita, agere si velit jumentum per M. Scauri Tusculanum.—Actio est in auctorem praesentem his verbis: QUANDOQUE TE IN JURE CONSPICIO. Hac actione Appius ille Caecus uti non posset, si tam vere homines verba consectarentur, ut rem cujus caussa verba sunt non considerarent.—Testamento si recitatus heres esset pupillus Cornelius, isque jam annos XX haberet, vobis interpretibus amitteret hereditatem. Veniunt in mentem mihi permulta; vobis plura, certo scio. Verum ne nimium multa complectamur atque ab eo quod propositum est longius aberret oratio, hoc ipsum interdictum de quo agitur consideremus. Intelligetis enim in eo ipso, si in verbis jus constituamus, omnem utilitatem nos hujus interdicti, dum versuti et callidi volumus esse, amissuros. UNDE TU AUT

clares that two years are 'usus' and 'auctoritas;'" that is, the 'usus' must exist for two years, and thus the 'auctoritas' is obtained, which means the 'title.' So 'usus auctoritas' is equivalent to 'usucapio.'

via immunita,] Cicero speaks of one of the 'servitutes' called 'via,' which 'servitus' exists when one man has a right of road through another man's land: "via est jus eundi et agendi et ambulandi, nam et iter et actum via in se continet" (Dig. 8. 3. 1). Cicero says that if there is no road made (si via sit immunita), the man to whom the 'servitus' is due can drive his beast through any part, that is, any part of the land which owes the 'servitus;' and not through any person's land any where. The way in which Cicero treats this matter is ridiculous. On this passage see Dirksen, Zwölf-Tafel-Fragmente, p. 484.

auctorem] This is the MSS. reading, and the true reading. 'Actorem,' which occurs in some old editions, spoils the sense, and there is no MSS. authority for it. A Right is either a new Right acquired by some person; or it is a Right which one person derives from another. When one person derives his Right from the Right of another, the person from whom the Right is derived is the 'auctor,' the person who gives the derived Right; and consequently a man who thus gets a Right can have no better Right than the man from whom he derives his Right (auctor). It is said (De Regulis Juris, Dig. 50. 17. 175): "non debeo melioris conditionis esse quam auctor meus a quo jus in me transit." It is immaterial to us what particular kind of action Cicero is referring to, if he had any in view. He supposes Appius, who was blind, to use the formal words: "Since I see you in court;" and yet he could not see.

There is a dispute whether we should have 'Quandoque' or 'Quando.' It seems that either will do. (See Keller's note.)

tam vere] A difficulty has been made about 'vere,' which, if it is right, means 'true to the words,' 'strict.' 'Severe' has been conjectured, and 'tantopere' by Garatoni: but the text needs no alteration. See c. 21, 'quos appellare vere possumus.' —'ut rem:' the Erfurt MSS. The reading 'quam rem' is unintelligible.

pupillus] When the testament is read after the testator's death, at which time a testament has its effect, Cicero supposes Cornelius, a name taken merely for example's sake, to be described in the will as 'pupillus' or under fourteen; and yet when the will is read he is supposed to be twenty, and therefore no longer 'pupillus.' Such an interpretation as Cicero suggests, could not have been made even by his opponents.

de quo agitur] 'quo de agitur:' Erf. Klotz: but Cicero seems to have used both forms (Keller):—'callidi volumus:' Erf. has 'velimus,' which Klotz has received and defends. But 'velimus' is the wrong form here, I think. Klotz says: "it is well known that the Latins were very fond of making the several members of the sentence depend on the principal verb, which here is 'intelligitis:'" for he puts this verb in the present tense.

FAMILIA AUT PROCURATOR TUUS. Si me villicus tuus solus dejecisset, non familia dejecisset, ut opinor, sed aliquis de familia. Recte igitur diceres te restituisse? Quippe: quid enim facilius est quam probari iis, qui Latine sciant, in uno servulo familiae nomen non valere? Si vero ne habeas quidem servum, praeter eum qui me dejecerit, clames videlicet: si habeo familiam, a familia mea fateor te esse dejectum. Neque enim dubium est quin, si ad rem judicandam verbo ducimur, non re, familiam intelligamus quae constet ex servis pluribus, quin unus homo familia non sit. Verbum certe hoc non modo postulat, sed etiam cogit. At vero ratio juris interdictique vis et praetorum voluntas et hominum prudentium consilium et auctoritas respuat hanc defensionem et pro nihilo putet. XX. Quid ergo? isti homines Latine non loquuntur? immo vero tantum loquuntur quantum est satis ad intelligendam voluntatem, quum sibi hoc proposuerint, ut sive me tu dejeceris sive tuorum quispiam sive servorum sive amicorum, ut servos non numero distinguant, sed appellent uno familiae nomine; de liberis autem quisquis est, procuratoris nomine appelletur: non quo omnes sint aut appellentur procuratores, qui negotii nostri aliquid gerant, sed in hac re, cognita sententia interdicti, verba subtiliter exquiri omnia noluerunt. Non enim alia caussa est aequitatis in uno servo et in pluribus; non alia ratio juris in hoc genere duntaxat, utrum me tuus procurator dejecerit, is qui legitime procurator dicitur omnium rerum ejus qui in Italia non sit absitve rei publicae caussa, quasi quidam paene dominus, hoc est, alieni juris vicarius, an tuus colonus aut vicinus aut cliens aut libertus aut quivis qui illam vim dejectionemque tuo rogatu aut tuo nomine fecerit. Quare si ad eum restituendum qui vi dejectus est, eandem vim habet aequitatis

restituisse?] The defendant is supposed to be able to affirm in the Sponsio that he had complied with the praetor's order to restore (restituere), because he had not done the act which was the foundation of the interdict (c. 21). 'Quippe' is an affirmative answer to the question; and the reason of the answer is shown by 'quid enim,' &c. 'Quippe' is a difficult word to explain. The best way of understanding its use is to examine the passages cited by Forcellini.—'qui modo Latine:' Baiter.

quin,—quin] The 'quin' is repeated. No MSS. variation is mentioned.

20. *ut sive me — ut servos*] Here the 'ut' is repeated. Lambinus 'ope veteris codicis' wrote 'ut me restituas sive tu dejeceris:' but Lambinus has not had credit for good faith in this and other like cases. Certainly there is no difficulty in the text.

non quo omnes] Though the term Procurator was used in the Interdict (c. 19), Cicero says that every man who did something for another was not a Procurator; and that as this word must not be taken in its strict sense, the other words of the Interdict must also not be strictly interpreted (cognita sententia interdicti, verba subtiliter exquiri omnia noluerunt). As to the nature of the office of Procurator, see Pro P. Quintio, c. 6; and Vol. I. Verr. Divin. c. 4.

legitime] This word properly means 'according to some lex.' Here it means, 'properly,' 'truly,' 'in legal form.'

ratio, ea intellecta, certe nihil ad rem pertinet quae verborum vis sit ac nominum. Tam restitues, si tuus me libertus dejecerit, nulli tuo praepositus negotio, quam si procurator dejecerit: non quo omnes sint procuratores qui aliquid nostri negotii gerunt, sed quod in hac re quaeri nihil attinet. Tam restitues, si unus servulus quam si familia fecerit universa: non quo idem sit servulus quod familia; verum quia non quibus verbis quidque dicatur quaeritur, sed quae res agatur. Etiam si, ut longius a verbo recedamus, ab aequitate ne tantulum quidem, si tuus servus nullus fuerit, sed omnes alieni ac mercenarii, tamen et ipsi tuae familiae genere et nomine continebuntur. XXI. Perge porro hoc idem interdictum sequi; HOMINIBUS COACTIS. Neminem coegeris: ipsi convenerint sua sponte. Certe cogit is qui congregat homines et convocat. Coacti sunt ii qui ab aliquo sunt unum in locum congregati. Si non modo convocati non sunt, sed ne convenerunt quidem, sed ii modo fuerunt qui etiam antea, non vis ut fieret, verum colendi aut pascendi caussa esse in agro consueverant, defendes homines coactos non fuisse, et verbo quidem superabis, me ipso judice; re autem ne consistes quidem ullo judice. Vim enim multitudinis restitui voluerunt, non solum convocatae multitudinis, sed, quia plerumque, ubi multitudine opus est, homines cogi solent, ideo de coactis compositum interdictum est: quod etiamsi verbo differre videbitur, re tamen erit unum et omnibus in caussis idem valebit in quibus perspicitur una atque eadem caussa aequitatis. ARMATISVE. Quid dicemus? Armatos, si Latine loqui volumus, quos appellare vere possumus? opinor eos qui scutis telisque parati ornatique sunt. Quid igitur? Si glebis aut saxis aut fustibus aliquem de fundo praecipitem egeris, jussusque sis quem hominibus armatis dejeceris restituere, restituisse te dices? Verba si valent, si caussae non ratione sed vocibus ponderantur, me auctore dicito: vinces profecto, non fuisse armatos eos qui saxa jacerent, quae de terra ipsi tollerent, non esse arma caespites neque glebas; non fuisse armatos eos qui praetereuntes ramum defringerent arboris; arma esse suis nominibus, alia ad tegendum, alia ad nocendum, quae qui non habuerint, eos inermos fuisse vinces. Verum siquidem erit

21. *Neminem coegeris:*] "Suppose you have brought no persons together: suppose they assembled of their own accord."

si Latine loqui] Cicero often uses this expression. See Vol. I. Verr. ii. 4. c. 2.

me auctore dicito:] This means, 'you may say it on my authority;' which is the same as 'I admit that you may say it.' 'Vincere' often means to 'prove;' of which there are many examples.

siquidem erit] 'si quod erit:' Baiter. —'armorum judicium' is opposed to 'juris judicium,' a form of expression only used, as it appears, in order to be contrasted with 'armorum judicium.' It is not a trial about arms, says Cicero, but it is a trial about a

armorum judicium, tum ista dicito; juris judicium quum erit et aequitatis, cave in ista tam frigida, tam jejuna calumnia delitiscas; non enim reperies quemquam judicem aut recuperatorem, qui, tamquam si arma militis inspiciunda sint, ita probet armatum, sed proinde valebit quasi armatissimi fuerint, si reperientur ita parati fuisse ut vim vitae aut corpori potuerint afferre. XXII. Atque ut magis intelligas quam verba nihil valeant, si tu solus, aut quivis unus cum scuto, cum gladio impetum in me fecisset atque ego ita dejectus essem, auderesne dicere interdictum esse de armatis hominibus, hic autem hominem armatum unum fuisse? Non, opinor, tam impudens esses. Atqui vide ne multo nunc sis impudentior. Nam tum quidem omnes mortales implorare posses, quod homines in tuo negotio Latine obliviscerentur, quod inermi armati judicarentur, quod, quum interdictum esset de pluribus, commissa res esset ab uno, unus homo plures esse homines judicaretur. Verum in his caussis non verba veniunt in judicium, sed ea res cujus caussa verba haec in interdictum conjecta sunt. Vim quae ad caput ac vitam pertinet restitui sine ulla exceptione voluerunt. Ea fit plerumque per homines coactos armatosque: si alio consilio, eodem periculo facta sit, eodem jure esse voluerunt. Non enim major est injuria, si tua familia quam si tuus villicus; non si tui servi quam si alieni ac mercenarii; non si tuus procurator quam si vicinus aut libertus tuus; non si coactis hominibus quam si voluntariis aut etiam assiduis ac domesticis; non si armatis quam si inermibus, qui vim haberent armatorum ad nocendum; non si pluribus quam si uno armato. Quibus enim rebus plerumque

legal matter. There was a drama of Pacuvius entitled Armorum Judicium, which is mentioned by the grammarian Nonius; and Cicero's allusion would be understood by his hearers (Klotz).—'calumnia:' see Vol. I. Verr. ii. 1. c. 10, and c. 23 of this oration. 'Calumnia' signifies here a dishonest interpretation of the meaning of words. Ulpian (De vi et de vi armata, Dig. 43. 16. 3) shows that in his time the meaning of 'arma' was settled to be what Cicero maintains that it was: 'armis dejectum quomodo accipimus? Arma sunt omnia tela, hoc est, fustes,' &c.—'proinde:' T., 'perinde,' Baiter.

22. *judicaretur.*] There is a reading 'judicarentur,' which Klotz has, but the singular is the true reading. The words 'tum quidem' refer to the 'si glebis aut saxis,' &c., and to 'si tu solus,' &c. The difficulty in translating this passage consists in the words 'implorare posses, quod' &c.: "For in that case you might have complained to all the world, that men in this matter of yours were forgetting how to speak Latin, that men unarmed were declared to be armed men, that though the Interdict applied to more than one, and the act had been committed by one, yet one man was declared to be several."—'in interdictum:' 'ad interdictum,' Klotz, following the Turin. Pal. But Keller is right in maintaining that 'in' is the proper Latin usage.

pertinet] There is a reading 'pertineret' in the Turin. Pal., which Klotz maintains to be the true reading. The indicative and the subjunctive do not mean the same thing. The phrase 'vim . . . restitui' expresses the restoration of the injured party to the condition in which he was before the act of 'vis' was done.

vis fit, ejusmodi hae res appellantur interdicto. Si per alias res eadem facta vis est, ea tametsi verbis interdicti non concluditur, tamen sententia juris atque auctoritate retinetur.

XXIII. Venio nunc ad illud tuum: 'Non dejeci; non enim sivi accedere.' Puto te ipsum, Piso, perspicere quanto ista sit angustior iniquiorque defensio quam si illa uterere: 'Non fuerunt armati, cum fustibus et cum saxis fuerunt.' Si mehercule mihi non copioso homini ad dicendum optio detur, utrum malim defendere, non esse dejectum eum cui vi et armis ingredienti sit occursum, an armatos non fuisse eos qui sine scutis ac sine ferro fuerint, omnino ad probandum utramque rem videam infirmam nugatoriamque esse, ad dicendum autem in altera videar mihi aliquid reperire posse, non fuisse armatos eos qui neque ferri quidquam neque scutum ullum habuerint: hic vero haeream, si mihi defendendum sit, eum qui pulsus fugatusque sit non esse dejectum. Atque illud in tota defensione tua mihi maxime mirum videbatur, te dicere jurisconsultorum auctoritati obtemperari non oportere. Quod ego tametsi non nunc primum neque in hac caussa solum audio, tamen admodum mirabar abs te quam ob rem diceretur. Nam ceteri tum ad istam orationem decurrunt, quum se in caussa putant habere aequum et bonum quod defendant. Si contra verbis et litteris, et, ut dici solet, summo jure contenditur, solent ejusmodi iniquitati

vis fit, ejusmodi &c.] Baiter has 'vis fit ejusmodi, eae res.' Whether we take the reading 'hae res' or 'eae res,' is not material; but Baiter's punctuation shows that he misunderstood the text. The meaning is plain: "For by such acts (ways) as violence is generally committed, so (ejusmodi) are the acts (ways) named in the interdict. If the same violence is done in other ways or by other acts, though it is not comprehended within the terms of the interdict, still it is held within the meaning and the authority of the law." Klotz has pointed it right.

23. *jurisconsultorum auctoritati*] This is one of the earliest notices of the 'auctoritas' or authority of the opinion of the Roman Jurisconsulti. But this passage is not explained by the passage in the Institutes of Justinian to which Hotmann refers: "Responsa prudentium sunt sententiae et opiniones," &c. (Inst. i. § 8) The original passage is in Gaius (i. 7), and the explanation of it is not easy. Nothing more is meant here than the respect paid to the legal opinions of the great 'jurisconsulti,' whom it was the practice to consult, and probably their opinions were cited for the purpose of aiding a man's case; for it is certain that no opinion of a 'jurisconsultus' at this time at least had any weight or authority except as an opinion. The passage of Pomponius on this matter is (Dig. 1. 2. 2. § 47): "Ante tempora Augusti publice respondendi jus non a principibus dabatur, sed qui fiduciam studiorum suorum habebant, consulentibus respondebant. Neque responsa utique signata dabant, sed plerumque judicibus ipsis scribebant, aut testabantur qui illos consulebant."

summo jure] That means 'according to the strict letter of the law.' There was a proverbial saying that 'summum jus' was 'summa injuria,' as Cicero says (De Offic. i. 10): "Exsistunt etiam saepe injuriae calumnia quadam et nimis callida, sed malitiosa juris interpretatione. Ex quo illud, Summum jus, summa injuria, factum est jam tritum sermone proverbium."—'boni et aequi:' Lambinus edited 'aequi et boni' after the Erf., and he is followed by Klotz, who expresses his wonder "at finding the solecism 'boni

boni et aequi nomen dignitatemque opponere. Tum illud quod dicitur, SIVE, NIVE, irrident, tum aucupia verborum et litterarum tendiculas in invidiam vocant: tum vociferantur, ex aequo et bono non ex callido versutoque jure rem judicari oportere; scriptum sequi calumniatoris esse; boni judicis voluntatem scriptoris auctoritatemque defendere. In ista vero caussa, quum tu sis is qui te verbo litteraque defendas, quum tuae sint hae partes: Unde dejectus es, an inde quo prohibitus es accedere? ejectus es, non dejectus; quum tua sit haec oratio: Fateor me homines coegisse, fateor armasse; fateor tibi mortem esse minitatum, fateor hoc interdicto praetoris vindicari, si voluntas et aequitas valeat; sed ego invenio in interdicto verbum unum ubi delitiscam; non dejeci te ex eo loco quem in locum prohibui ne venires:—in ista defensione accusas eos qui consuluntur, quod aequitatis censeant rationem non verbi haberi oportere. XXIV. Et hoc loco Scaevolam dixisti caussam apud centumviros non tenuisse; quem ego antea commemoravi, quod idem faceret quod tu nunc, tametsi ille in aliqua caussa faciebat, tu in nulla facis, tamen probasse nemini quod defendit, quia verbis oppugnare aequitatem videbatur. Quum id miror, te hoc in hac re alieno tempore et contra quam ista caussa postulasset defendisse, tum illud vulgo in judiciis et nonnumquam ab ingeniosis hominibus defendi mihi mirum videri solet, nec jurisconsultis concedi nec jus civile in caussis semper valere oportere. Nam qui hoc disputant, si id dicunt, non recte aliquid statuere eos qui consulantur, non hoc debent dicere, juri civili sed hominibus stultis

et aequi' in the latest editions." He shows by examples that 'aequum et bonum' was the established order, from which nobody could deviate without offending the Roman ear. He says enough to persuade anybody who does not look for the truth himself. Keller observes that you may find nearly thirty instances of the expressions 'bonum et aequum,' 'melius aequius,' &c. from every class of writers.

sive, nive,] The MSS. are corrupted here. The words in the text are the conjecture of Gulielmius, which has been received. Cicero is alluding to the forms of the Sponsiones, which contain, Si, Sive, Ni, Nive. The 'litterarum tendiculae' are the traps, snares, that lurk under words.

ejectus es,] See c. 13, where Keller's proposed correction 'rejectus' is mentioned. He observes on this passage, that 're' in 'accedere' precedes 'ejectus,' and this may explain how 'rejectus' might become 'ejectus.'—'hoc interdicto,' &c.: 'haec interdictum praetoris vindicavisse,' Baiter.

24. *caussam—tenuisse*] 'Caussam tenere' is the same as 'caussam obtinere,' to succeed in maintaining a case. Faber quotes Horace (Epp. i. 16. 43):

> 'Quo responsore et quo caussae teste tenentur.'

There are many other examples.

antea commemoravi, quod &c.] The reading in the text seems to be the only one that is intelligible. The form of the sentence 'quem ego — videbatur' is confused; but the meaning is plain.—'quod defendit:' the MSS. are said to have 'quod defendis,' except the Erf. which has 'quod defendes,' which Klotz defends; though there is no sense in it. In his 2nd ed. Klotz has 'defendebat,' which Baiter accepts.

juri civili] The three Venice editions of 1472, 1480, 1499 have 'jurisconsultis,' which Baiter has followed. The Erfurt and some other MSS. have 'juris civilis.'

obtemperari non oportere. Sin illos recte respondere concedunt et aliter judicari dicunt oportere, male judicari oportere dicunt. Neque enim fieri potest, ut aliud judicari de jure, aliud responderi oporteat, nec ut quisquam juris numeretur peritus qui id statuat esse jus quod non oporteat judicari.—At est aliquando contra judicatum.—Primum utrum recte an perperam? Si recte, id fuit jus quod judicatum est; sin aliter, non dubium est utrum judices an jurisconsulti vituperandi sint. Deinde, si de jure vario quidpiam judicatum est, potius contra jurisconsultos statuunt, si aliter pronuntiatum est ac Mucio placuit, quam ex eorum auctoritate, si ut Manilius statuebat, sic est judicatum. Etenim ipse Crassus non ita caussam apud centumviros egit ut contra jurisconsultos diceret, sed ut hoc doceret, illud quod Scaevola defendebat non esse juris, et in eam rem non solum rationes afferret, sed etiam Q. Mucio, socero suo, multisque peritissimis hominibus auctoribus uteretur. XXV. Nam qui jus civile contemnendum putat, is vincula revellit non modo judiciorum, sed etiam utilitatis vitaeque communis; qui autem interpretes juris vituperat, si imperitos juris esse dicit, de hominibus, non de jure civili detrahit: sin peritis non putat esse obtemperandum, non homines laedit, sed leges ac jura labefactat. Quod vobis venire in mentem profecto necesse est, nihil esse in civitate tam diligenter quam jus civile retinendum. Etenim hoc sublato nihil est quare exploratum cuiquam possit esse, quid suum aut quid alienum sit; nihil est quod aequabile inter omnes atque unum omnibus esse possit. Itaque in ceteris controversiis atque judiciis, quum quaeritur, aliquid factum necne sit, verum an falsum proferatur, et fictus testis subornari solet, et interponi falsae tabulae,

id fuit jus] That is the law which is pronounced to be law by him and by those who have authority to declare the law. There may be error or bad intention in those who declare the law, and then we may say that the jurisconsult is right, and the court is wrong. But still it is not the jurisconsult who can declare the law and give it effect. That is the office of the judge.

jure vario] 'Jus varium' is the same as 'controversum jus' (Pro Murena, c. 13). It is the law or the interpretation of law about which the lawyers differ in opinion. In some old editions there is 'non' before 'potius;' but there appears to be no MSS. authority for it. Klotz omits it, but he obtains the necessary negation, as he calls it, by putting a note of interrogation after 'est judicatum.' If the sentence is made interrogative without the 'non,' the sense is spoiled. Baiter has 'non potius.'

Mucio] This is Q. Mucius Scaevola Pontifex Maximus. Hotmann supposes that Mucio means both P. Mucius Scaevola, Pontifex Maximus, the father, and his son Q. Mucius, who was also Pontifex Maximus. 'Q. Mucio, socero suo' is Q. Mucius Scaevola, the augur, the father-in-law of Crassus. Cicero (De Or. i. 7. 45) calls the augur Q. Mucius. Manilius is a jurisconsult whom Cicero often mentions, as in De Or. i. 48. Cicero means to say that his authority as a jurisconsult was not equal to that of Mucius.—'non esse juris:' 'was not law;' for so this genitive may be used.

25. *interponi*] This is the correction of Hotmann, and there is hardly a doubt that

nonnumquam honesto ac probabili nomine bono viro judici error objici, improbo facultas dari, ut, quum sciens perperam judicarit, testem tamen aut tabulas secutus esse videatur. In jure nihil est ejusmodi, recuperatores, non tabulae falsae, non testis improbus; denique nimia ista quae dominatur in civitate potentia in hoc solo genere quiescit; quid agat, quomodo aggrediatur judicem, qua denique digitum proferat, non habet. Illud enim potest dici judici ab aliquo non tam verecundo homine quam gratioso: Judica hoc factum esse, aut numquam esse factum [vel cogitatum]; crede huic testi; has comproba tabulas: hoc non potest: Cui filius agnatus sit, ejus testamentum non esse ruptum judica; quod mulier sine tutore auctore promiserit, deberi. Non est aditus ad hujusmodi res neque potentiae cujusquam neque gratiae; denique, quo majus hoc sanctiusque videatur, ne pretio quidem corrumpi judex in ejusmodi caussa potest. Iste vester testis, qui ausus est dicere, FECISSE VIDERI eum, de quo ne cujus rei argueretur quidem scire potuisset, ipse numquam auderet judicare, deberi viro dotem quam mulier nullo auctore dixisset.

XXVI. O rem praeclaram vobisque ob hoc retinendam, recupe-

it is right. All the MSS., so far as it appears, have 'imponi.' The error, if it is one, is easily explained from the abbreviated form in which 'interponi' might be written. —'honesto,' &c.: this means "under an honourable form and one that has the appearance of justice and fair dealing." It is explained by the remainder of the sentence. In a trial, a judex may be deceived by the evidence, or he may accept the evidence, though he does not believe it, and may give a dishonest judgment. But the jurisconsult, as Cicero argues, has only to apply the law to the facts as they are presented to him; and he cannot be deceived like the judex, nor can he be dishonest, as he says.

testem tamen] 'testamentum autem' or 'testamentum aut' is the MSS. reading. That in the text is the conjecture of P. Manutius; and it is right.

vel cogitatum] There is a reading 'creatum,' which is not intelligible. There is little authority for 'cogitatum.'—'agnatus:' this is the true reading, for which some MSS. have 'ac natus.' Cicero states a case in which there can only be one decision. A Roman will was made void by the birth of a Postumus or Postuma. The phrase was 'adgnascendo rumpitur testamentum.' A Postumus was a child born after the execution of the will, as it has been already said; and if such child was not exheredated 'nominatim' the will became void. Cicero says (De Or. 1. 57): "Num quis eo testamento, quod paterfamilias ante fecit quam ei filius natus esset, hereditatem petiit? Nemo, quia constat adgnascendo rumpi testamentum." This is what Gaius (ii. 130) says: "Postumi quoque liberi vel heredes institui debent vel exheredari." Compare Papinian (Dig. 28. 3. 1).

sine tutore] Roman women had not the capacity of acting generally in affairs of business without a 'tutor,' who was the 'auctor,' whose consent (auctoritas) gave validity to the woman's acts. Gaius (i. 144) says: "veteres enim voluerunt feminas, etiam si perfectae aetatis sint, propter animi levitatem in tutela esse." Compare Pro Murena, c. 12; and the speech of M. Porcius Cato, Liv. xxxiv. 2.

fecisse videri] See Pro Fonteio, c. 13.—'potuisset:' it is said that all the MSS. have 'potuistis.' Klotz writes 'scire potuit, is ipse,' which Keller considers to be a good conjecture; and Baiter accepts it.

deberi—dotem] This is a particular instance of what he has just said, "quod mulier sine tutore auctore promiserit." In the oration Pro Flacco, c. 35: "si fuit, quaecunque sine hoc auctore est dicta dos, nulla est." 'Dotem dicere' is the common expression.

ratores! Quod enim est jus civile? Quod neque inflecti gratia, neque perfringi potentia, neque adulterari pecunia possit; quod si non modo oppressum, sed etiam desertum aut negligentius asservatum erit, nihil est quod quisquam sese habere certum, aut a patre accepturum, aut relicturum liberis arbitretur. Quid enim refert aedes aut fundum relictum a patre, aut aliqua ratione habere bene partum, si incertum sit, quae quum omnia tua jure mancipii sint, ea possisne retinere? si parum sit communitum jus? si civili ac publica lege contra alicujus gratiam teneri non potest? Quid, inquam, prodest, fundum habere, si, quae decentissime descripta a majoribus jura finium, possessionum, aquarum itinerumque sunt, haec perturbari aliqua ratione commutarique possunt? Mihi credite, major hereditas unicuique nostrum venit in iisdem bonis a jure et a legibus, quam ab iis a quibus illa ipsa bona relicta sunt. Nam ut perveniat ad me fundus testamento alicujus fieri potest; ut retineam quod meum factum sit sine jure civili non potest. Fundus a patre relinqui potest: at usucapio fundi, hoc est, finis sollicitudinis ac periculi litium, non a patre relinquitur sed a legibus. Aquae ductus, haustus, iter, actus, a patre: sed rata auctoritas harum rerum omnium a jure civili sumitur. Quapropter non minus diligenter ea, quae a majoribus accepistis, publica patrimonia juris,

26. *quae quum—mancipii sint,*] The commentators have found great difficulties here, and have proposed various alterations. The words 'quum omnia' may be corrupt. 'Res mancipi' as Gaius says (ii. 22) "sunt quae per mancipationem ad alium transferuntur; unde mancipi res sunt dictae." The 'mancipatio' was a formal sale in the presence of not less than five witnesses, Roman citizens and of full age (puberes), and also in the presence of another person of the same condition, who held a pair of scales (Gaius i. 119). The object of the formality was doubtless to preserve evidence of the transaction. If, then, the text is right, it means: "if it is doubtful whether you can keep the things, though they are all yours by the law of ownership." The 'res mancipi' are enumerated by Ulpian (Frag. xix.). Among them was land in Italy, 'servitutes,' slaves, and other things. Other things were called 'nec mancipi.' We do not know the origin of the distinction between these two classes of things. But it seems probable that all things of any value were originally transferred in this formal way; and that when things of a new kind came into use, they still kept to the old practice, and did not extend the term 'res mancipi' to these new things. Baiter has "si incertum est, quaecunque tua jure mancipii sunt, . . . si parum communitum jus est civile ac" &c.

decentissime] Garatoni altered this to 'diligentissime,' and Baiter has followed him; but I do not. 'Descripta' should be 'discripta,' but these variations are seldom registered by the critics.

usucapio fundi,] The father might have left the 'fundus' to his son without having a good title to it; but the son, by the uninterrupted enjoyment of it for two years, might obtain a good title, which would be a defence against all suits. Gaius (ii. 54) speaks of 'usucapio' as giving the 'heres' a title, when the testator had made his will without observing the proper forms. As to rights of water (aquae ductus, haustus) and rights of road (iter, actus), Cicero makes the same remark: the father may give by his testament, but it is the law which determines what and to whom he may give, and in what form; and it is the law which secures him in the enjoyment of what has been given.

publica—privatae rei] The commentators say nothing here; but there is probably something wrong.

quam privatae rei vestrae retinere debetis: non solum, quod haec jure civili saepta sunt, sed etiam, quod patrimonium unius incommodo dimittitur, jus amitti non potest sine magno incommodo civitatis.

XXVII. In hac ipsa caussa, recuperatores, si hoc nos non obtinemus, vi armatis hominibus dejectum esse eum, quem vi armatis hominibus pulsum fugatumque esse constat, Caecina rem non amittet, quam ipsam animo forti, si tempus ita ferret, amitteret; in possessionem in praesentia non restituetur; nihil amplius. Populi Romani caussa, civitatis jus, bona, fortunae possessionesque omnium in dubium incertumque revocabuntur; vestra auctoritate hoc constituetur, hoc praescribetur: Quicum tu posthac de possessione contendes, eum, si ingressum modo in praedium dejeceris, restituas oportebit; sin autem ingredienti cum armata multitudine obvius fueris, et ita venientem reppuleris, fugaris, averteris, non restitues. Tum statueritis vim in caede solum esse, non etiam in animo; nisi cruor appareat, vim non esse factam; injuria dici eum dejectum esse, qui prohibitus sit; nisi ex eo loco ubi vestigium impresserit, dejici neminem posse. Juris igitur retineri sententiam et aequitatem plurimum valere oportere, [an] verbo ac littera jus omne torqueri, vos statuite, recuperatores, utrum utilius esse videatur.

Hoc loco percommode accidit, quod non adest is qui paullo ante adfuit et adesse nobis frequenter in hac caussa solet vir ornatissimus, C. Aquillius: nam ipso praesente de virtute ejus et prudentia timidius dicerem, quod et ipse pudore quodam afficeretur ex sua laude, et me similis ratio pudoris a praesentis laude tardaret: cujus auctoritati dictum est ab illa caussa concedi nimium non oportere. Non vereor de tali viro ne plus dicam quam vos aut sentiatis, aut apud vos commemorari velitis. Quapropter hoc dicam, numquam ejus auctoritatem nimium valere, cujus prudentiam populus Roma-

27. *obtinemus*,] 'obtinebimus,' Junt.—'rem non amittet:' Caecina will not lose his property, though he will not recover possession at present. 'Nihil amplius' means 'this is all.' The transition to 'Populi Romani,' &c. is abrupt.

non restitues. Tum statueritis—utrum utilius esse videatur.] All this passage is uncertain. I shall merely give Baiter's text, who follows Madvig: "non restitues. Juris haec vox est, esse vim non in caede solum, sed etiam in animo; libidinis, nisi cruor pareat, vim non esse factam: juris, dejectum esse qui prohibitus sit; libidinis, nisi ex eo loco ubi vestigium impresserit dejici neminem posse; juris, rem et sententiam et aequitatem plurimum valere oportere; libidinis, verbo ac litera jus omne torqueri. Vos statuite, recuperatores, et viliores esse videantur." I have altered Baiter's punctuation a little.

C. Aquillius:] See the oration Pro P. Quintio, c. 1.

ab illa caussa] This means 'by the opposite side.'

Non vereor] 'Non' is said to appear in no MS.; but it is necessary, and has been added by the editors long ago.

nus in cavendo, non in decipiendo perspexerit; qui juris civilis rationem numquam ab aequitate sejunxerit; qui tot annos ingenium, laborem, fidem suam populo Romano promptam expositamque praebuerit; qui ita justus est et bonus vir, ut natura, non disciplina consultus esse videatur; ita peritus ac prudens, ut ex jure civili non scientia solum quaedam verum etiam bonitas nata videatur; cujus tantum est ingenium, ita prompta fides, ut quidquid inde haurias purum te liquidumque haurire sentias. Quare permagnam initis a nobis gratiam, quum eum auctorem nostrae defensionis esse dicitis. Illud autem miror, cur vos aliquid contra me sentire dicatis, quum eum auctorem vos pro me appelletis, nostrum nominetis. Verumtamen quid ait vester iste auctor? Omnibus quidquid verbis actum pronuntiatumque sit.

XXVIII. Conveni ego ex isto genere consultorum non neminem, ut opinor, istum ipsum, quo vos auctore rem istam agere et defensionem caussae constituere vos dicitis. Qui quum istam disputationem mecum ingressus esset, non posse probari quemquam esse dejectum, nisi ex eo loco in quo fuisset, rem et sententiam interdicti mecum facere fatebatur, verbo me excludi dicebat; a verbo autem posse recedi non arbitrabatur. Quum exemplis uterer multis, etiam illa materia aequitatis, a verbo et ab scripto plurimis saepe in rebus jus et aequi bonique rationem esse sejunctam, semperque id valuisse plurimum, quod in se auctoritatis habuisset aequitatisque plurimum, consolatus est me et ostendit in hac ipsa

in cavendo,] See Vol. I. Verr. ii. 1. c. 11. This legal word applies to all cases where the 'jurisconsultus' provides for the safety of his client by his advice, or for the interests of honest men in general, by the care with which any legal document or any legal form is drawn up. Cicero says (De Or. i. 48): "sin autem quaereretur, quisnam jurisconsultus vere nominaretur, eum dicerem qui legum et consuetudinis ejus qua privati in civitate uterentur, et ad respondendum et ad agendum et ad cavendum peritus esset." Compare Cicero, Brutus, c. 41.

purum te &c.] Like clear fresh water. Horace (Epp. ii. 2. 120) says:

"Vehemens et liquidus puroque simillimus amni."

Illud autem—nominetis.] Something appears to be wrong here. It is not difficult to see what Cicero means to say. The opposite side said that Aquillius had advised the kind of defence which Cicero was making: and Cicero says that he wonders that in saying this they supposed that they were saying any thing that was against him.—The text of this oration is often corrupt, and though the restorations of the critics are often ingenious, we do not accept them as Cicero's words.

Omnibus quidquid, &c.] There is no sense in this. Baiter, following Hotmann, has in large characters, 'Quibus quidque verbis,' &c. Hotmann supports his conjecture by referring to c. 20, 'quia non quibus,' &c., and to c. 28, 'non quibus quidque verbis,' &c.

28. *Conveni ego*] The MSS. reading 'Convenit ego' has been corrected as it stands in the text; and there can be no doubt about the correction. The critics have not agreed who the 'non neminem' is. Some suppose him to be C. Aquillius; but that is certainly a mistake. It was therefore somebody else, as Manutius justly concludes.—'quo vos auctore:' the Erf. has 'quo nos auctore,' which some editors have followed, but it is not easy to explain.

caussa nihil esse quod laborarem; nam verba ipsa sponsionis facere mecum, si vellem diligenter attendere. Quonam, inquam, modo? Quia certe, inquit, dejectus est Caecina vi hominibus armatis aliquo ex loco; si non ex eo loco quem in locum venire voluit, at ex eo certe unde fugit. Quid tum? Praetor, inquit, interdixit ut, unde dejectus esset, eo restitueretur, hoc est, quicumque is locus esset unde dejectus esset. Aebutius autem, qui fatetur aliquo ex loco dejectum esse Caecinam, is quum se restituisse dixit, necesse est male fecerit sponsionem. Quid est, Piso? placet tibi pugnare verbis? placet caussam juris et aequitatis, et non nostrae possessionis, sed omnino possessionum omnium, constituere in verbo? Ego, quid mihi videretur, quid a majoribus factitatum, quid horum auctoritate quibus judicandum est dignum esset ostendi; id verum, id aequum, id utile omnibus esse, spectari quo consilio et qua sententia, non quibus quidque verbis esset actum. Tu me ad verbum vocas; non ante veniam quam recusaro. Nego oportere, nego obtineri posse, nego ullam rem esse quae aut comprehendi satis aut caveri aut excipi possit, si aut praeterito aliquo verbo aut ambigue posito, re et sententia cognita, non id quod intelligitur, sed id quod dicitur, valebit.

XXIX. Quoniam satis recusavi, veniam jam quo vocas. Quaero abs te, simne dejectus, non de Fulciniano fundo: neque enim praetor, si ex eo fundo essem dejectus, ita me restitui jussit, sed eo unde dejectus essem: sum ex proximo vicini fundo dejectus, qua adibam ad istum fundum, sum de via, sum certe alicunde, sive de privato, sive de publico. Eo restitui sum jussus. Restituisse

is quum] The reading of the Erf. is said to be 'is quo.' There is also authority for 'is quum,' and for 'is quo modo,' which may possibly be right. Baiter has 'is quoniam.'—'fecerit sponsionem:' see Vol. I. Verr. ii. 5. c. 54. Add Gaius (iv. 171): "ex quibusdam caussis sponsionem facere permittitur."

tibi pugnare] 'tibi nos pugnare:' Erf. Klotz, and Baiter.

29. *praetor,*] The abbreviation 'p. r.' (populus Romanus) is evidently a mistake, which has long since been corrected.—'ita me restitui jussit:' the words of the interdict were general, 'eo unde dejectus,' and the name of the place or 'fundus' was not mentioned in the interdict. I hardly know if there is a reading 'jussisset,' but, as some readers might suppose that 'jussit' is wrong, it is well to say that it is right. Hotmann, who saw that 'jussit' was right, says that the words, 'Si — essem dejectus' are the words of the praetor, which is not quite exact. Cicero says that the praetor did not use the words 'Si — essem dejectus,' but the other words.

Restituisse—esse.] This is quoted by Quintilian (Inst. ix. 3. 22), who has 'dixti,' not 'dixisti.'—'ex decreto:' this is the reading of all the known MSS., but Quintilian has 'ex edicto,' a reading which occurs in many of the old editions (Keller's note). Lambinus would have 'interdicto.' Baiter has 'ex edicto.' Cicero might have said 'ex edicto,' pursuant to the edict, which would mean pursuant to the general rule declared in the Edictum. But if it is not the praetor's general order which is here meant, but his order made in this particular case, and made conformably to the Edictum, we must have the proper word to express the order made in this particular case, which

te dixti. Nego me ex decreto praetoris restitutum esse. Quid ad haec dicimus? Aut tuo, quemadmodum dicitur, gladio, aut nostro defensio tua conficiatur necesse est. Si ad interdicti sententiam confugis, et de quo fundo actum sit tum quum Aebutius restituere jubebatur, id quaerendum esse dicis, neque aequitatem rei verbi laqueo capi putas oportere, in meis castris praesidiisque versaris. Mea, mea est ista defensio, ego hoc vociferor, ego omnes homines deosque testor, quum majores vim armatam nulla juris defensione texerint, non vestigium ejus qui dejectus sit, sed factum illius qui dejecerit in judicium venire, dejectum esse qui fugatus sit, vim esse factam cui periculum mortis sit injectum. Istum locum fugis et reformidas, et me ex hoc, ut ita dicam, campo aequitatis ad istas verborum angustias et ad omnes litterarum angulos revocas. In iis ipsis intercludere insidiis quas mihi conaris opponere. Non dejeci, sed ejeci. Peracutum hoc tibi videtur, hic est mucro defensionis tuae. In eum ipsum caussa tua incurrat necesse est. Ego enim tibi refero: Si non sum ex eo loco dejectus quo prohibitus sum accedere, at ex eo sum dejectus, quo accessi, unde fugi: si praetor non distinxit locum quo me restitui juberet, et restitui jussit, non sum ex decreto restitutus. Velim, recuperatores, hoc totum, si vobis versutius quam mea consuetudo defendendi fert videbitur, sic existimetis; primum alium non me excogitasse, deinde hujus rationis non modo [non] inventorem sed ne probatorem quidem esse me, idque me non ad meam defensionem attulisse, sed illorum defensioni rettulisse; me posse pro meo jure dicere, neque in hac re quam ego protuli quaeri oportere, quibus

is an Interdictum. And an Interdictum was sometimes called a 'decretum' (Gaius, iv. 140).

quemadmodum dicitur,] This was a common saying to express that a man had a bad case.

jubebatur,] There is a reading, 'videbatur,' which is wrong, but it is instructive as an instance of the confusion of these two words. See Pro P. Quintio, c. 20, note on 'ita videbare.'—'in meis castris,' &c.: this is the same as saying that he is on Cicero's side; and he uses this and similar forms of expression elsewhere.

Istum locum] There is a reading 'is tu locum,' and 'is in hunc locum,' and 'is in locum.' Baiter has "Sin hunc locum . . . angulos revocas, in iis ipsis intercludere insidiis," which is ingenious and may be true. He says that the pronoun 'iste' is quite out of place here, and that the argument requires 'sin,' which word has been corrupted by the copyists, as in the case of 'sin peritis' (c. 25), where the 'sin' is lost in incorrect readings.

sed ejeci.] 'Sed rejeci:' Keller. See c. 13.

refero:] 'I reply;' as in this chap. a little further on: and in the Orat. Part. c. 30: "Et ubi ita refertur; Majestas et in imperii atque in nominis Populi Romani dignitate." —'ex decreto:' 'ex edicto,' Baiter.

non modo [non]] There is a reading 'non modo nunc,' which Klotz has. The second 'non' before 'inventorem' is contrary to Cicero's usage.

pro meo jure] See Pro S. Rosc. Amer. c. 47. Cicero uses this expression very often. The context explains the particular sense. He means that he can 'justly, fairly say,' 'that he has a right to say.'

verbis praetor interdixerit, sed de quo loco sit actum, quum interdixit: neque in vi armatorum spectari oportere, in quo loco sit facta vis, verum sitne facta: te vero nullo modo posse defendere, in qua re tu velis verba spectari oportere, in qua re nolis non oportere. XXX. Verumtamen, ecquid mihi respondetur ad illud quod antea dixi, non solum re et sententia, sed verbis quoque hoc interdictum ita esse compositum ut nihil commutandum videretur? Attendite, quaeso, diligenter, recuperatores. Est enim vestri ingenii non meam sed majorum prudentiam cognoscere. Non enim id sum dicturus quod ego invenerim, sed quod illos non fugerit. Quum de vi interdicitur, duo genera caussarum esse intelligebant ad quae interdictum pertineret: unum, si qui ex eo loco ubi fuisset se dejectum diceret; alterum, si qui ab eo loco quo venisset vi dejectus esset: et horum utrumque neque praeterea quidquam potest accidere, recuperatores. Id adeo sic considerate. Si qui meam familiam de meo fundo dejecerit, ex eo me loco dejecerit; si qui mihi praesto fuerit cum armatis hominibus extra meum fundum et me introire prohibuerit, non ex eo sed ab eo loco me dejecerit. Ad haec duo genera rerum unum verbum, quod satis declararet utrasque res, invenerunt: ut, sive ex fundo sive a fundo dejectus essem, uno atque eodem interdicto restituerer: UNDE TU. Hoc verbum, UNDE, utrumque declarat, et ex quo loco et a quo loco. Unde dejectus est Cinna? ex Urbe. Unde dejecti * *?

quum interdixit:] The Erf. has 'intererit.' The true tense is 'interdixit,' as 'praetor interdixerit' is the true tense in that place. Klotz has 'quum interdixerit,' as Keller remarks, "propter Latinitatis istam suam quasi necessitatem (Praef. p. 36)." Klotz's notions of Latin have often the merit of being singular.

30. *ecquid*] There are readings 'quid' and 'et quid.' Manutius corrected the text—'quod ego jam antea,' Baiter.

ex eo loco—vi dejectus esset] There are many variations here; and it is difficult to say what is genuine. Baiter writes 'quo veniret,' and omits 'vi dejectus esset.' Instead of 'se dejectum' the Erf. has 'se ejectum,' which is certainly wrong; and this instance helps to explain how 'rejeci' and 'rejectus,' which Keller has written above, may have been corrupted into 'ejeci' and 'ejectus.'

Id adeo sic] I have followed Baiter; and I think that he has got the genuine words. The common reading is 'id adeo, si placet, considerate.' He compares Pro Cluentio, c. 30: "Id adeo sic cognoscite."

praesto fuerit] Comp. Vol. I. Verr. ii. 2. c. 4; and Caesar, B. G. v. 26, where the word has its ordinary use.

Cinna?] Many MSS. have 'Caecina' or 'Caecinna,' an instance of the numerous mistakes in our MSS. of Cicero. Cinna was ejected from Rome (B.C. 88) in his consulship by the senatorial party and his own colleague Cn. Octavius. The story is told by various authors (Appian, B. C. i. 55, 56; and Plutarch, Marius, c. 41, 42).

*Unde dejecti * *?*] This blank has been filled up in various ways. Buttman conjectures 'unde dejecti Tusci,' and refers to Livy, ii. 51. Baiter writes 'unde Telesinus? ab urbe,' a conjecture which he founds on the reading of the MS. T., which is 'unde dejecti sinus;' and because the mention of Telesinus agrees well with what is said of Cinna. He refers to Vell. Paterc. ii. 27; Florus, Epit. p. 90, ed. Jahn; and Plutarch, Sulla, c. 29.—'unde dejecti Galli?' See Livy, v. 47; and Cicero, Philipp. iii. 8.—'cuniculus' is a mine or underground passage used in mining, and also for penetrating into besieged places (Caesar, B.

ab Urbe. Unde dejecti Galli? a Capitolio. Unde qui cum Graccho fuerunt? ex Capitolio. Videtis igitur, hoc uno verbo UNDE significari res duas, et ex quo et a quo loco. Quum autem EO restitui jubet, ita jubet, ut, si Galli a majoribus nostris postularent, ut eo restituerentur unde dejecti essent, et aliqua vi hoc assequi possent, non, opinor, eos in cuniculum, qua aggressi erant, sed in Capitolium restitui oporteret. Hoc enim intelligitur: UNDE DEJECISTI, sive ex quo loco sive a quo loco. EO RESTITUAS. Hoc jam simplex est, in eum locum restituas; sive ex hoc loco dejecisti, restitue in hunc locum, sive ab hoc loco, restitue in eum locum, non ex quo sed a quo dejectus est. Ut si qui ex alto, quum ad patriam accessisset, tempestate subito rejectus optaret, ut, quum esset a patria dejectus, eo restitueretur, hoc, opinor, optaret, ut, a quo loco depulsus esset, in eum se fortuna restitueret, non in salum, sed in ipsam urbem quam petebat; sic, quoniam verborum vim necessario similitudine rerum aucupamur, qui postulat, ut, a quo loco dejectus est, hoc est, unde dejectus est, eo restituatur, hoc postulat ut in eum ipsum locum restituatur. XXXI. Quum verba nos eo ducunt, tum res ipsa hoc sentire atque intelligere cogit. Etenim, Piso, redeo nunc ad illa principia defensionis meae, si quis te ex aedibus tuis vi hominibus armatis dejecerit, quid ages? Opinor, hoc interdicto quo nos usi sumus persequere. Quid, si qui jam de foro redeuntem armatis hominibus domum tuam te introire prohibuerit, quid ages? Utere eodem interdicto. Quum igitur praetor interdixerit, unde dejectus es, ut eo restituaris, tu hoc idem quod ego dico et quod perspicuum est interpretabere: quum illud verbum, UNDE, in utramque rem valeat, EOque tu restitui sis jussus, tam te in aedes restitui oportere, si e vestibulo quam si ex interiore aedium parte dejectus sis.

Ut vero jam, recuperatores, nulla dubitatio sit, sive rem sive verba spectare vultis, quin secundum nos judicetis, exoritur hic jam obrutis rebus omnibus et perditis illa defensio, eum dejici posse qui tum possideat; qui non possideat nullo modo posse: itaque si

G. iii. 21; vii. 22). Klotz observes that this allusion of Cicero does not correspond with the story in Livy of the way in which the Galli scaled the Capitol, and that there may have been two stories.

qui cum Graccho] He means T. Gracchus. See Plutarch, T. Gracchus, c. 19; Appian, B. C. i. 16. All this argument about the Galli and the Gracchi is trifling.

Hoc enim intelligitur:—Hoc jam simplex est,] Keller has pointed this right. It means: 'for this is understood, this is clear.' 'Unde dejecisti' means, 'sive ex quo loco,' 'sive a quo loco.'—'Eo restituas:' 'this is now plain and easy; you must restore him to the place,' &c. Baiter has misunderstood it, and the other editors, Klotz not excepted. At least his pointing is wrong. After explaining 'unde dejecisti' by 'sive ex quo,' &c., Cicero explains 'Eo restituas' by 'in eum locum restituas.'

ego sim a tuis aedibus dejectus, restitui non oportere; si ipse sis, oportere. Numera quam multa in ista defensione falsa sint, Piso. Ac primum illud attende, te jam ex illa ratione esse depulsum, quod negabas quemquam dejici posse, nisi inde ubi tum esset: jam posse concedis; eum qui non possideat negas dejici posse. Cur ergo aut in illud quotidianum interdictum UNDE ILLE ME VI DEJECIT additur QUUM EGO POSSIDEREM, si dejici nemo potest qui non possidet; aut in hoc interdictum DE HOMINIBUS ARMATIS non additur, si oportet quaeri, possederit necne? Negas dejici nisi qui possideat. Ostendo, si sine armatis coactisve hominibus dejectus quispiam sit, eum qui fateatur se dejecisse vincere sponsionem, si ostendat eum non possedisse. Negas dejici nisi qui possideat. Ostendo ex hoc interdicto DE ARMATIS HOMINIBUS, qui possit ostendere non possedisse eum qui dejectus sit, condemnari tamen sponsionis necesse esse, si fateatur esse dejectum. XXXII. Dupliciter homines dejiciuntur, aut sine coactis armatisve hominibus aut per ejusmodi rationem atque vim. Ad duas dissimiles res duo dijuncta interdicta sunt. In illa vi quotidiana non satis est posse docere se dejectum, nisi ostendere possit quum possideret tum dejectum. Ne id quidem satis est, nisi docet ita se possedisse, ut nec

31. *nisi inde—dejici posse.*] The common text is: "nisi qui ex eo loco fuerit; nunc qui possideat, eum etiamsi non fuerit ex eo loco, dejici posse concedis; eum qui non." &c. I have given the text as it stands in Baiter, who has followed Orelli, except that he has omitted 'tum.' Orelli's text is founded on the corrupt reading 'nisi *in dubium esse etiam* posse concedis;' and the restoration is ingenious. But the common text may still be right, for after 'ex eo loco fuerit' it is very easy to supply 'unde dejectus esset' or 'unde dejiceretur,' as Faber observes, for they have been used often enough.

quotidianum interdictum,] This is the 'interdictum de vi' as opposed to the 'interdictum de vi armata.' See the Introduction and Verr. ii. 1. c. 19: "de quotidianis criminibus."

vincere sponsionem,] It seems that both 'vincere sponsionem' and 'sponsione' are Latin. See Pro P. Quintio, c. 27. Cicero says 'vincere caussam.' Klotz has the following remark: "According to the rule firmly established by Ph. Ed. Huschke, in his notes on the speech Pro M. Tullio, § 30, that 'vincere sponsionem' was said of him who was challenged, and 'vincere sponsione' of him who gave the challenge, we ought to read both here and in c. 32 'vincere sponsionem;' as, on the other hand, in the Pro Quintio, c. 27, we rightly read 'ego sponsione vincerem;' and we should perhaps even now write 'vincere sponsionem' in our speech, since this distinction appears to be also grammatically established, though the readings of the manuscripts almost constantly incline to the ablative." Klotz has 'vincere sponsione,' both in this chapter and in c. 32.

condemnari—sponsionis] This means that the person against whom the judgment is given has failed in the 'sponsio;' that his affirmation in the 'sponsio' was not true. 'Damnare' is thus used with a genitive: "Quibusdam judiciis damnati ignominiosi fiunt; velut furti, vi bonorum raptorum, injuriarum" (Gaius iv. 182).

32. *dijuncta*] It seems that no MS. has 'dijuncta,' which, however, is certainly right. The readings are 'dejuncta' and 'rejuncta.' It is doubtful if 'dejungere' is a genuine word.

vi quotidiana] See the note on Interdictum Quotidianum, c. 31.

ostendere possit] The Erf. has 'ostendere potest.'—'nec vi nec clam' &c.: see the oration Pro Tullio.

vi nec clam nec precario possederit. Itaque is qui se restituisse dixit, magna voce saepe confiteri solet se vi dejecisse, verum illud addit: Non possidebat; vel etiam, quum hoc ipsum concessit, vincit tamen sponsione, si planum facit ab se illum aut vi aut clam aut precario possedisse. Videtisne quot defensionibus eum, qui sine armis ac multitudine vim fecerit, uti posse majores voluerint? hunc vero, qui ab jure, officio, bonis moribus ad ferrum, ad arma, ad caedem confugerit, nudum in caussa destitutum videtis, ut, qui armatus de possessione contendisset, inermus plane de sponsione certaret. Ecquid igitur interest, Piso, inter haec interdicta? ecquid interest, utrum in hoc sit additum QUUM A. CAECINA POSSIDERET, necne? Ecquid te ratio juris, ecquid interdictorum dissimilitudo, ecquid auctoritas majorum commovet? Si esset additum, de eo quaeri oporteret. Additum non est; tamen oportebit? Atque ego in hoc Caecinam non defendo: possedit enim Caecina, recuperatores: et id, tametsi extra caussam est, percurram tamen brevi, ut non minus hominem ipsum quam jus commune defensum velitis. Caesenniam possedisse propter usumfructum non negas. Qui colonus habuit conductum de Caesennia fundum, quum idem ex eadem conductione fuerit in fundo, dubium est quin, si Caesennia tum possidebat, quum erat colonus in fundo, post ejus mortem heres eodem jure possederit? Deinde ipse

quot—voluerint?] The Erf. and many other MSS. have 'quot—voluerunt.' I don't think that the indicative is right here, where we have a clause which contains 'fecerit.'

inermus] This is the reading of the Erf. It seems that there were both forms, 'inermus' and 'inermis.'

possideret,] This tense is said to be in the edition of P. Manutius. The MSS. have 'possederit,' which cannot be right.

propter usumfructum] Cicero maintains that Caesennia 'possedisse,' because she had the 'usufructus' or a life interest. But this is not true: "is qui rogavit ut precario in fundo moretur, non possidet, sed possessio apud eum qui concessit remanet; nam et fructuarius, inquit, et colonus et inquilinus sunt in praedio, et tamen non possident." The 'colonus' is the tenant. He who acquires possession in the Roman sense acquires it with the intention of having the thing as his own, whether he be really owner or not. The 'usufructuarius' has only a derived possession, good for certain purposes. Savigny (Das Recht des Besitzes, p. 285, 5th ed., note) remarks on this passage: "that a different rule of law prevailed at this time, or that Cicero through ignorance or for the interest of his own side stated a false proposition as true, is not necessary to be assumed. For that the Fructuarius has really a kind of possession, that is, the 'juris quasi possessio' with a right to the Interdicts, is not to be denied. Also in that case the only question was the existence of the Interdicts. But the Fructuarius cannot be said to have a proper 'possessio,' that is, a 'possessio juris ipsius rei;' and Cicero does not maintain this. It is true that the consequences which he draws from this proposition are to be set down only to the account of the advocate."

post ejus mortem] If Cicero means to say that Caecina had possession, because he succeeded as 'heres' to one who had possession, he states a proposition which is not true according to Roman law, and is contrary to the very nature of possession. For the 'heres' must do some act in order to have possession. He may be the owner; but the testament or intestacy which gives him ownership does not give him posses-

Caecina, quum circuiret praedia, venit in istum fundum, rationes a colono accepit. Sunt in eam rem testimonia. Postea cur tu, Aebuti, de isto potius fundo quam de alio, si quem habes, Caecinae denuntiabas, si Caecina non possidebat? Ipse porro Caecina cur se moribus deduci volebat, idque tibi de amicorum, etiam de ipsius C. Aquillii sententia responderat?

XXXIII. At enim Sulla legem tulit. Ut nihil de illo tempore, nihil de calamitate rei publicae querar, hoc tibi respondeo, adscripsisse eundem Sullam in eandem legem, SI QUID JUS NON ESSET ROGARIER, EJUS EA LEGE NIHILUM ROGATUM. Quid est quod jus non sit, quod populus jubere aut vetare non possit? Ut ne longius abeam, declarat ista adscriptio esse aliquid. Nam nisi esset, hoc in omnibus legibus non adscriberetur. Sed quaero abs te, putesne, si populus jusserit me tuum, aut item te meum servum esse, id jussum ratum atque firmum futurum? Perspicis hoc nihil esse [, ut in ceteris, quae rogavit]. Primum illud concedis, non quidquid populus jusserit ratum esse oportere: deinde nihil rationis affers quamobrem, si libertas adimi nullo modo possit, civitas possit. Nam et eodem modo de utraque re traditum nobis est, et si semel civitas adimi potest, retineri libertas non potest. Qui enim potest

sion. Savigny observes (Das Recht des Besitzes, p. 320): "how little Cicero relies on the truth of his proposition appears from that which he finds it necessary to add immediately in the following words 'Deinde ipse Caecina,'" &c.

de amicorum,—responderat?] This passage is in confusion. Baiter has it thus: "de amicorum [† de his de Aquillii] sententia responderat [† et aequum]."

33. *At enim* &c.—*Quid est* &c.] These are two questions of Cicero's opponent. The Lex is Sulla's Lex about taking the 'civitas' from the Volaterrani; and Cicero explains why this could not be done. (See c. 7.) The formula 'Si quid' &c. was placed at the end of a Lex; or something to the same effect. A passage in a letter of Cicero to Atticus (iii. 23) explains this formula: "Si quid in hac rogatione scriptum est quod per leges plebisve scita .... promulgare, abrogare, derogare, obrogare, s. f. (sine fraude) sua non liceat, non licuerit, quodve ei qui promulgavit, abrogavit, derogavit, obrogavit, ob eam rem poenae multaeve sit, e. h. l. n. r. (ejus hac lege nihil rogatur)." This was an attempt to limit the power of a legislature, which is absurd. For the sovereign power can unmake a law as well as make it. If an attempt was made to give a Lex perpetual force, by imposing a penalty on the proposer of any Lex which should repeal the former Lex, this could be evaded by repealing the former Lex and the penalty at the same time, as Cicero says in the same letter: "Scis enim Clodium sanxisse, ut vix aut omnino non posset nec per senatum nec per populum infirmari sua lex. Sed vides numquam esse observatas sanctiones earum legum quae abrogarentur. Nam, si id esset, nulla fere abrogari posset: neque enim ulla est quae non ipsa se saepiat difficultate abrogationis: sed quum lex abrogatur, illud ipsum abrogatur quo non eam abrogari oporteat." 'Sanctio' is explained in Vol. I. Verr. ii. 1. c. 42.—'in eadem lege,' Baiter.

quod jus non sit,] That is 'quod jus non sit rogari.'

ut in ceteris, &c.] The text is corrupt, and though the meaning is not doubtful, the words are. Baiter writes, 'Perspicis hoc nihil esse et fateris: qua in re primum illud concedis.'

civitas—jure Quiritium] The difference between 'jus civitatis' and 'jus Quiritium' is not clearly established. Under the empire there was no difference. The difference existed in the early times. Klotz, following others, affirms exactly the contrary, that the Jus Quiritium and Jus Civitatis

jure Quiritium liber esse is qui in numero Quiritium non est? Atque ego hanc adolescentulus caussam, quum agerem contra hominem disertissimum nostrae civitatis Cottam, probavi. Quum Arretinae mulieris libertatem defenderem, et Cotta decemviris religionem

were the same in Cicero's time, but different at a later time; and he proves this as to the later time by a reference to the correspondence of Pliny and Trajan (Pliny's Epp. x. 4. 6. 22. 23. 105. 108). 'Civitas' was the general term; and a man could be 'civis' without having all the rights of a Roman citizen. The Populus Romanus was also called Quirites, as in Gellius (i. 12) 'pro Populo Romano Quiritibus.' There seems also to be the form Populus Romanus Quiritium. The 'civitas' in this passage of Cicero means the political rights (suffragium et honores); and the private rights as they are called, which are comprehended in two words, 'commercium' and 'connubium.' There is nothing in Cicero's argument, except a play on words. A man might lose all his rights as a Roman citizen, but that did not make him a slave. For instance if he went into 'exsilium,' he ceased to be a Roman citizen; but he did not lose his liberty. It is true that if he ceased to be a Roman citizen, he was not 'liber jure Quiritium:' but he might be 'liber' without being a Roman citizen. The whole is a mere play with words, after Cicero's fashion.

Cottam,] C. Aurelius Cotta (Brutus, c. 49. 55. 88), a distinguished orator, was consul B.C. 75. The case of the woman of Arretium (Arezzo) was tried probably in B.C. 79. It was a 'caussa liberalis,' or one in which the question was about the free or servile condition of the woman. Cotta maintained that she was not a free woman; and Cicero defended her freedom.

decemviris] As the Romans had Triumviri for various purposes, and a court of Centumviri for others, so they seem to have had a court of Decemviri for trying certain questions, such as questions about freedom or servitude, and about citizenship (Pomponius, Dig. 1. 2. 3. § 29; Cicero, Pro Domo, c. 29). The words 'religionem injecisset' mean that 'he had raised a scruple or difficulty in the minds of those who had to decide. The 'sacramentum' was one of the five old forms of procedure which were comprehended under the term 'lege agere' (Gaius iv. 12); and it was the general mode of proceeding where no other was fixed. That which determined the character of the action was a penalty of a fixed sum, which was paid to the Aerarium by the losing party. The penalty was fixed by the Twelve Tables. It was 500 asses, when the matter in dispute was worth 1000 asses or more; and fifty asses for other cases, even when it was a question about a person's freedom: "sed si de libertate hominis controversia erat, etsi pretiosissimus homo esset, tamen ut L assibus sacramento contenderetur eadem lege cautum est favoris causa, ne satisdatione onerarentur adsertores." An 'adsertor' is he who claims or maintains the freedom of a person against one who maintains that he is a slave. By the 'sacramentum' the matter assumed the form of a question who was to pay the penalty.

The Sacramentum was so named, because the sum of money was deposited by the parties in a sacred place. The successful party took his money back: the money of the unsuccessful party went into the Aerarium (Varro, De L. L. 180, Müller). Accordingly the sum of money itself was called 'sacramentum' and the proceeding was named 'sacramento contendere.'

Some absurd opinions about the origin and meaning of the Sacramentum and of the nature of the Legis actiones have been proposed by those who have misapplied the notion of the 'sacramentum militare.' Gaius (iv. 13) shows how the 'summa' mentioned in the 'sponsio' and 'restipulatio' was only a later form of the 'sacramentum,' of which action he says: "eaque actio perinde periculosa erat . . . atque hoc tempore periculosa est actio certae creditae pecuniae propter sponsionem, qua periclitatur reus si temere neget, et restipulationem, qua periclitatur actor, si non debitum petat; nam qui victus erat summam sacramenti praestabat poenae nomine; eaque in publicam cedebat, praedesque eo nomine Praetori dabantur, non ut nunc sponsionis et restipulationis poena lucro cedit adversario qui vicerit."

The following remarks will complete the explanation of this matter: "The 'sacramento contendere' consisted in the challenge to make the deposit, and at a later time to promise the penal sum: 'D aeris sacramento te provoco: similiter ego te.' The condition of the penalty was the existence or non-existence of the right maintained by the plaintiff, which was accordingly declared in the words of the Lex on which the right was founded. When the parties afterwards

injecisset, non posse nostrum sacramentum justum judicari, quod Arretinis adempta civitas esset, et ego vehementius contendissem civitatem adimi non potuisse, decemviri prima actione non judicaverunt, postea re quaesita et deliberata sacramentum nostrum justum judicaverunt. Atque hoc et contra dicente Cotta et Sulla vivo judicatum est. Jam vero in ceteris, ut omnes qui in eadem caussa sunt et lege agant et suum jus persequantur, et omni jure civili sine cujusquam aut magistratus aut judicis aut periti hominis aut imperiti dubitatione utantur, quid ego commemorem? Dubium est nemini vestrum. Certe quaeri hoc solere me non praeterit, ut ex me ea quae tibi in mentem non veniunt audias, quemadmodum, si civitas adimi non possit, in colonias Latinas saepe nostri cives profecti sint. Aut sua voluntate aut legis multa profecti sunt, quam multam si sufferre voluissent, tum manere in civitate potuissent. XXXIV. Quid, quem pater patratus dedidit, aut suus

came In Judicium, they expressed their claims to the court before the proceedings commenced in a short comprehensive form. This was called Causae conjectio; and it was necessary, because the expression of the matter in dispute in the Legis actio was only general, and the Judex was not sufficiently informed by it of the disputed question. The court before which the matter came, when the proceeding was Sacramento, was originally the court of the Decemviri. The Lex Pinaria gave the power of bringing the question before a single Judex." (Puchta, Inst. Vol. II. § 161.)

Puchta adds the following note: "Valerius has the abbreviations: Q. N. T. S. Q. S., which he explains thus: Quando negas te sacramento quinquagenario provoco," &c.

Dubium est &c.] 'Dubium esse nemini vestrum? Certo quaeri,' &c.: Erf. Baiter has 'Dubium esse nemini vestrum certo *scio*. Quaeri hoc,' &c. Klotz has 'dubium est nemini vestrum, certo. Quaeri hoc solere.'

tum manere] The abbreviation of 'tum' is 'tū;' and of 'tamen' the abbreviation is 'tn̄.' These abbreviations are often confounded. Baiter rejects both 'tum' and 'tamen.' 'Tamen' is certainly out of place, as Keller shows, and 'tum' seems superfluous. Klotz has 'tamen,' which he defends.

This is a valuable passage on the Coloniae Latinae. A Roman citizen who went out in a Colonia Latina lost the Roman civitas. But he joined such a Colonia either of his own free will, or to escape some penalty or punishment at home. The origin of the name Coloniae Latinae belongs to the period before the union of the Latini with the Roman state. Becker observes (Handbuch der Röm. Alter. iii. 1. p. 31): "after the subjection of the Latini (338) and of the Hernici (306), when the League was destroyed, the Romans still continued to settle colonies in their conquests made beyond the limits of Latium, not colonies of Roman citizens, but colonies which had the rights of the previously existing Latin colonies, and as was natural in their own name; so that we must accordingly distinguish three periods of Latin colonies, before 493, during the League of the three nations (493—338), and after this time."

The proof that a Civis Romanus, who went out in a Latin colonia, sustained a Capitis deminutio minor, is contained in this passage; in the Pro Domo, c. 30; and in Gaius, iii. 56.

34. *pater patratus*] The 'pater patratus' was the chief of the Feciales, who transacted with the enemy the matters which related to peace and war. The Jus Feciale, or the law which regulated these matters, may be considered as corresponding, in part at least, to the modern Law of Nations (Savigny, System, &c. i. § 11).

'Patratus' perhaps has an active sense; and it means he who acts or does. The element 'patra' appears in several compounds.

The examples of men given up by the Romans to the enemy are those of T. Veturius and Sp. Postumius, who were given to the Samnites after the affair at the Fauces Caudinae, but not accepted (Liv. ix. 10); and the case of Hostilius Mancinus, which

pater populusve vendidit, quo is jure amittit civitatem? Ut religione civitas solvatur, civis Romanus deditur, qui quum est acceptus, est eorum quibus est deditus; si non accipiunt, ut Mancinum Numantini, retinet integram caussam et jus civitatis. Si pater vendidit eum quem in suam potestatem susceperat, ex potestate dimittit. Jam populus quum eum vendidit qui miles factus non est, non adimit ei libertatem, sed judicat non esse eum liberum qui ut liber sit adire periculum noluit: quum autem incensum vendit, hoc judicat; quum ii qui in servitute justa fuerunt censu liberentur, eum qui, quum liber esset, censeri noluerit, ipsum sibi libertatem abjudicavisse. Quod si maxime hisce rebus adimi libertas aut civitas potest, non intelligunt, qui haec commemorant, si per has rationes majores adimi posse voluerunt, alio modo noluisse? Nam ut haec ex jure civili protulerunt, sic afferant velim, quibus lege aut rogatione civitas aut libertas erepta sit. Nam quod ad exsilium attinet, perspicue intelligi potest quale sit. Exsilium enim non supplicium est sed perfugium portusque supplicii. Nam qui volunt poenam aliquam subterfugere aut calamitatem, eo solum vertunt,

is reported by Plutarch (Tib. Gracch. c. 7) and by Cicero in his De Oratore (i. 40).

The Senate gave up Mancinus and others in order to be released from the obligation of a treaty (ut religione solvatur), which they would not confirm. But it was a disputed question whether the 'deditus,' if not accepted by the enemy, recovered his citizenship 'jure postliminii,' as Cicero himself says (De Or. i. 40): "Quem pater suus aut populus vendidisset, aut pater patratus dedidisset, ei nullum esse postliminium." Cicero maintains the citizenship in this case by the same sophistical argument (Top. c. 8). Compare Dig. 50. 7. 17.

pater—vendidit,] A sale was the mode by which a father released a son from the 'patria potestas' (Gaius i. 132). The words of the Lex of the XII. were: "Si pater filium ter venum duit, filius a patre liber esto."

miles factus] A free Roman who in any way refused the military service sustained a 'maxima capitis deminutio.' He lost his citizenship and his freedom (Gaius i. 159). Cicero's argument is sophistical. He wishes to maintain the proposition that no Roman citizen can be deprived of his freedom against his will (Pro Domo, c. 29); and this is the way in which he proves his point.—'periculum noluit:' 'periculum noluerit:' Klotz (Praef. p. 25. 42).

ii—fuerunt—liberentur,] There is also a reading 'is—fuerit—liberetur.' If a man attempted to escape the property tax by not being rated (incensus: Liv. i. 44) he lost his freedom. The chief passage on this matter is Dion. Hal. Rom. Antiq. iv. 15. Compare v. 75; and Ulpian Frag. xi. 11.

One of the forms of legal manumission (justa manumissio) was the entry of the slave's name on the Censors' lists as a citizen, with the consent of his master. We must assume that the slave had a sufficient 'peculium,' or that his master gave him some property. But it was a question whether the slave became free by being on the lists, or whether his liberty was not complete till the Lustrum was celebrated (Cicero, De Or. i. 40).

hisce rebus] Some editions have 'iisce,' a form which is not found in Cicero, and which is inconsistent with the meaning of 'is' (Keller's note). There is a strange reading 'uisceribus,' which ought to be 'hisce rebus.'

rogatione] This is a correction of Ant. Augustinus. The MSS. are said to have 'ratione;' in place of which many editions have 'Romana.'

eo solum] Orelli would change 'eo' to 'ei.' Jordan writes 'quia volunt,' comparing Ad Att. x. 17. 4; and Ad Fam. ix. 16. 4.—'homines:' this is the true word, in place of which the MSS. have 'omnes,' as

hoc est, sedem ac locum mutant. Itaque nulla in lege nostra reperietur, ut apud ceteras civitates, maleficium ullum exsilio esse mulctatum; sed quum homines vincula, neces ignominiasque vitant, quae sunt legibus constitutae, confugiunt quasi ad aram in exsilium. Qui si in civitate legis vim subire vellent, non prius civitatem quam vitam amitterent: quia nolunt, non adimitur iis civitas, sed ab iis relinquitur atque deponitur. Nam quum ex nostro jure duarum civitatum nemo esse possit, tum amittitur haec civitas denique, quum is qui profugit receptus est in exsilium, hoc est, in aliam civitatem.

XXXV. Non me praeterit, recuperatores, tametsi de hoc jure permulta praetereó, tamen me longius esse prolapsum quam ratio vestri judicii postularit. Verum id feci, non quod vos in hac caussa hanc defensionem desiderare arbitrarer, sed ut omnes intelligerent nec ademptam cuiquam civitatem esse neque adimi posse. Hoc quum eos scire volui, quibus Sulla voluit injuriam facere, tum omnes ceteros novos veteresque cives. Neque enim ratio afferri potest cur, si cuiquam novo civi potuerit adimi civitas, non omnibus patriciis, omnibus antiquissimis civibus possit. Nam ad hanc quidem caussam nihil hoc pertinuisse primum ex eo intelligi potest, quod vos ea de re judicare non debetis, deinde quod Sulla ipse ita tulit de civitate ut non sustulerit horum nexa atque hereditates. Jubet enim eodem jure esse quo fuerint Ariminenses, quos quis

it seems. The two words are often confounded. In place of 'civitas denique' it has been proposed to write 'civitas demum' (Bake, Cic. De Legg. p. 479).

This is one of the chief passages about 'exsilium,' a word which like 'exsul' appears to contain the element 'sol' (solum). The other passages in Cicero are Pro Balbo, c. 11, &c.; Pro Domo, c. 29, 30. Cicero attempts to show that 'exsilium' is not a deprivation of the Roman 'civitas;' which is so far true, that there was no formal declaration of the loss of 'civitas.' If the choice was between death and 'exsilium' or 'soli mutatio,' which was followed by loss of 'civitas,' it can hardly be said that 'exsilium' was voluntary. A Roman could however voluntarily relinquish his 'civitas' by becoming a member of another state, it being a rule of Roman law, that a man could not be a citizen of two states (Pro Balbo, c. 11). The rule among the Greek states was different. A man might be a citizen of several states. It is a rule of English law founded on the feudal doctrine that an Englishman cannot renounce his allegiance or duty to the crown; a rule of law that cannot be any longer strictly maintained. Many British subjects renounce their allegiance to become citizens of the United States of North America; and it would not be possible now for the English law to treat them as rebels, if they defended themselves on American soil against an English army.

The 'interdictio tecti et aquae et ignis,' which Cicero himself at a later time experienced, was a real exile in our sense, though it was not called 'exsilium;' and it was not irrevocable.

35. *vestri judicii*] Klotz has 'nostri,' for which there is authority. Keller compares Pro Tullio, § 7, 'judicium vestrum.' —'non quod vos:' 'non quo vos,' Baiter.—'quod vos ea de re:' the Recuperatores had only to give their judgment on the matter before them, to follow the Praetor's instructions. Klotz omits 'ea,' and adds that 'ea de re' seems to him scarcely Latin; and that 'de re ea' would at least be more Latin. I don't know if he is right; but I think not. Caesar says 'His de rebus,' but 'hic' is not

ignorat duodecim coloniarum fuisse et a civibus Romanis hereditates capere potuisse? Quod si adimi civitas A. Caecinae lege potuisset,

'is.' He also says 'eadem de caussa' (B. G. iii. 13), and the like.

duodecim] This passage about the twelve colonies has been discussed by Savigny, Zeitschrift für Geschicht. R. W. Vol. v. p. 234. ix. p. 318; by Madvig, Opusc. Acad. p. 282, &c., and by others. Savigny formed a conjecture, founded on Livy (xxvii. 9, 10, and xxix. 15), that we should read 'duodeviginti' in place of 'duodecim.' The question about these colonies is very difficult. The Latini or Coloniae Latinae, after the enactment of the Lex Julia, formed, as it is now well-known, an intermediate class between Cives and Peregrini. The Latini had the Commercium, like a Roman citizen; and this means the capacity to acquire Quiritarian ownership, and to do all the acts necessary for obtaining it, —'vindicatio, cessio in jure, mancipatio, testamenti factio;' which Cicero expresses by 'nexa' and 'hereditates.' The word 'nexum' is not to be understood in the limited meaning of simply contracting an 'obligatio' in a particular way, as some have explained it; for even the 'testamenti factio' was included in 'nexum.' It has been disputed whether the Latini had the Commercium before the Lex Julia. Savigny maintains that some of them had it, and some had not. His attempt to explain the origin of the rights which the twelve, or, as he supposes, eighteen colonies had, is ingenious, but it cannot be accepted. Though we know nothing of the origin of these twelve colonies, it is maintained by Savigny to be a proper conclusion from this passage of Cicero, that these twelve colonies had the Commercium and that others had not. The Lex of Sulla declared that the Volaterrani should have the same rights as the Ariminenses; and Ariminum, says Cicero, was one of the twelve colonies where citizens could take under a Roman testament (a civibus Romanis capere potuisse). Ariminum obtained the 'civitas' by the Lex Julia, but it was plundered by Sulla (Cicero, Verr. ii. 1. c. 14), and, as it seems, was reduced to the condition which Cicero here describes. Sulla took away from the people the Connubium, and left them only the Commercium. By taking away the Connubium he deprived them of the chief part of the Roman 'civitas;' this was equivalent to a declaration that a citizen in Ariminum could not have the Patria Potestas. Volaterrae and Arretium were not Latinae Coloniae, but Etrurian towns; and when their citizenship was taken away, it was declared that they should have the same political rights as the Ariminenses, who were one of the twelve cities, whose condition was well-known to his hearers, as Cicero assumes. The proper conclusion from this passage is, and there is no evidence to contradict the conclusion, that Sulla reduced Ariminum and eleven other places to the condition described by Cicero, and that they had the 'civitas' before they sustained this loss; for what he left them, shows what he took away. The condition of Arretium and Volaterrae was determined by declaring that it should be the same as the condition of Ariminum at that time; for this is the meaning of 'fuerint,' which refers to the condition of these twelve places, when Ariminum received its new organization, and not to their condition before the Lex Julia. This condition did not exist when Cicero spoke this speech, for the places had recovered their former rights (Pro Domo, c. 30). See the note in Marquardt's continuation of Becker, Vol. iii. Part I. p. 41.

If we admit that Caecina was a Roman citizen, we may still ask (Keller, Semestr. p. 401), why this question was discussed in a matter which concerned the Sponsio and the Interdictum? It appears that Piso not only maintained that Caecina could not take under the testament of Caesennia, because he was not a Roman citizen, but that he could not have a judgment in his favour in the matter of the Sponsio and the Interdictum (c. 33, &c.). The reason why the question was raised has caused some difficulty. Keller says that he cannot conceive that the Interdicta de vi were limited to Roman citizens; and there is no reason to think that they were. Again, he does not suppose that the peculiar form of the Sponsio (Gaius, iii. 92), which was limited to Roman citizens, could be the reason. He admits that if the form of Sponsio between Aebutius and Caecina was in the terms 'Dari spondes? Spondeo,' Caecina must have had judgment against him, if he was not a Roman citizen. But he supposes that the Stipulatio could be made in other terms, for the name Sponsio, as Paulus says (Dig. 50. 16. 7), in his time however, it must be observed, comprised every Stipulatio and Promissio. Further, forms of Stipulatio were in use among Peregrini, which Romans also could use, as Gaius says; and Keller adds that it is credible that

magis illam rationem tamen omnes boni quaereremus, quemadmodum spectatissimum pudentissimumque hominem, summo consilio, summa virtute, summa auctoritate domestica praeditum, levatum injuria, civem retinere possemus, quam uti nunc, quum de jure civitatis nihil potuerit deperdere, quisquam exsistat, nisi tui, Sexte, similis et stultitia et impudentia, qui huic civitatem ademptam esse dicat. Qui quoniam, recuperatores, suum jus non deseruit, neque quidquam illius audaciae petulantiaeque concessit, de reliquo jam communem caussam populique jus in vestra fide ac religione deponit. XXXVI. Is homo ita se probatum vobis vestrique similibus semper voluit, ut id non minus in hac caussa laborarit, nec contenderit aliud quam ne jus suum dissolute relinquere videretur, nec minus vereretur, ne contemnere Aebutium quam ne ab eo contemptus esse existimaretur.

Quapropter si quid extra judicium est quod homini tribuendum sit, habetis hominem singulari pudore, virtute cognita, et spectata

in this matter of the Interdicts, which were common to Peregrini and Cives, there were common forms of Stipulatio. Keller says there is nothing in this oration to show that Piso founded any argument against Caecina on the form of the Sponsio. Keller might have seen that if we suppose Caecina to have used a form of Sponsio, which was not the strict Roman form, this would have been an admission that he was a Peregrinus; unless he can prove, which he cannot prove, that in these Interdicts a form common both to Cives and Peregrini was always used.

Keller concludes that the only reason why this question about Caecina's 'civitas' was raised, was as to his right to take under the testament (c. 35). It is rather singular that people have had such difficulty in seeing what is so plain. At the end of c. 32 Cicero maintains that Caecina was in possession. The next chapter (33) begins with the objection of Piso: 'At enim Sulla legem tulit.' There is no connection in the thought, no sense in the passage, unless we suppose that Piso's argument was this: that Caecina could not be in possession by any title, least of all as 'heres;' he had not the capacity to take as 'heres,' and of course he could not have possession as 'heres;' and he does not admit any other cause of possession. Keller says on this point, "what was the use of inquiring in the case of an Interdict De vi restituendaeque possessionis, whether Caecina was 'heres' under the testament of Caesennia? Was it necessary for Caecina to prove that the estate was his in order to get judgment in the matter of the Interdict? Certainly not." He then explains the reason in a way that is not very clear. The true explanation is that Piso denied that Caecina was in possession, and that he had any cause for taking possession. If he had admitted that Caecina could take under Caesennia's will, and that the land was hers to give, there might be some show, some probability, if there was not direct evidence, that Caecina might have been in possession. For as to determining which of the two men really was in possession, that is what no commentator has done yet; and for a sufficient reason. There is not evidence enough to determine this matter either way.

de reliquo—deponit.] 'De reliquo' is the conjecture of P. Faber, approved by Keller, and confirmed by T. V. (Baiter.) Many MSS. and the common editions have 'derelinquo . . . depono.' But 'derelinquo' has no meaning here. In the Verr. ii. 3. c. 51, it is joined with 'deserere.' 'Deponit' seems also to be the true reading. It was the conjecture of Faber, and the conjecture is confirmed by some MSS. (Baiter.) The reading 'deponitis' has arisen from a very obvious mistake.

36. *Is homo—existimaretur.*] It is not likely that Cicero wrote this sentence as we have it. Baiter has printed it thus: "Is homo est, ita se . . . . laborarit atque contenderit, quam ne dissolutius rem relinquere videretur, nec minus . . . existimaretur."

fide, amplissimis viris Etruriae totius in utraque fortuna cognitum multis signis et virtutis et humanitatis. Si quid in contraria parte in homine offendendum sit, habetis eum, ut nihil dicam amplius, qui se homines coegisse fateatur. Sin hominibus remotis de caussa quaeritis, quum judicium de vi sit, is qui arguitur vim se hominibus armatis fecisse fateatur, verbo se, non aequitate defendere conetur, id quoque ei verbum ipsum ereptum esse videatis, auctoritatem sapientissimorum hominum facere nobiscum, in judicium non venire utrum A. Caecina possederit necne, tamen doceri possedisse; multo etiam minus quaeri A. Caecinae fundus sit necne, me tamen id ipsum docuisse, fundum esse Caecinae:—quum haec ita sint, statuite quid vos tempora rei publicae de armatis hominibus, quid illius confessio de vi, quid nostra decisio de aequitate, quid ratio interdicti de jure admoneat ut judicetis.

amplissimis—totius] Baiter has 'amplissimo totius Etruriae nomine.' It is impossible to determine the true reading. See Keller's and Baiter's notes.

Sin hominibus—judicetis] The verbs 'fateatur,' 'conetur,' 'videatis,' depend on 'quum.' The sentence however proceeds heavily after 'videatis.' Keller would ease it by repeating the word; and then the text would be: 'ereptum esse videatis, videatis auctoritatem,' &c. He remarks that where a word has been repeated by Cicero, the copyists have often omitted it.

DE IMPERIO GN. POMPEII

ORATIO.

INTRODUCTION.

C. HALM'S edition of this oration (Leipzig, 1848) contains well-written Latin Prolegomena in four chapters. In the first chapter he treats of the acts of Pompeius before he received the command in the war against Mithridates. Cicero's allusions to the earlier career of Pompeius are briefly explained in the notes.

The following sketch is sufficient as an introduction to this oration. Pompeius was consul for the first time in B.C. 70 with M. Crassus, in which year he restored the Tribunitian Potestas which Sulla had reduced to a mere form, and by his influence he caused the Lex Aurelia Judiciaria to be enacted. (Vol. I. Divin. c. 3, and Excursus on the Judicia.)

Three years later (B.C. 67) A. Gabinius, Tribunus pl., proposed a Lex, which was enacted, and which gave to Pompeius the command in the war against the pirates, with an authority such as no Roman had yet received. (Dion xxxvi. 6; Plutarch, Pomp. 25; Appian, Mithrid. 94; Vell. Pat. ii. 31.) The Optimates were against giving such extravagant powers to one man, but the Lex was supported by C. Caesar, not for the sake of Pompeius, but to please the people, who were all in favour of Pompeius. The public confidence in Pompeius was shown by an immediate fall in prices, it being the general opinion that his appointment to the command gave security for the speedy destruction of the pirates, and the opening of the seas to commerce. (Plut. Pomp. 26.)

The public expectation was not disappointed. The seas were cleared of the pirates in about three months, and the Cilicians, the most formidable of them, were totally defeated at Coracesium (Aláya), a place on the south coast of Asia Minor, which Strabo makes the boundary between Cilicia and Pamphylia. Pompeius, not content with his own Provincia, attempted to interfere in the affairs of Crete, where

Q. Metellus had been sent as Proconsul (B.C. 68). But Metellus persisted in his design of subduing the island, which he accomplished, and thereby obtained the cognomen of Creticus. Pompeius was still in the East (B.C. 66), when the tribune C. Manilius, to the great disgust of the nobility, proposed a Lex which was to confer on Pompeius the command in the Mithridatic War.

([1]) Mithridates VI. Eupator succeeded his father about B.C. 120, and soon began to attempt to extend his dominions. After the defeat of Aristonicus (B.C. 129) the Romans had been firmly settled in that part of the peninsula between the Black Sea and the Mediterranean, which they named Asia; and Mithridates formed the design of driving them out and seizing all the country. He had quarrelled with Nicomedes II. about the possession of Cappadocia, and both Mithridates and Nicomedes had addressed themselves to the Roman Senate to support their claims. The Senate settled the dispute by taking Cappadocia from Mithridates, which he had got possession of by murdering king Ariarathes; and they took Paphlagonia from Nicomedes, who had got that country also by wrongful means. Both the Paphlagonians and the Cappadocians were declared free people by the Romans; but the Cappadocians refused the offer, upon which L. Sulla gave them a king, Ariobarzanes, B.C. 92. Mithridates now formed an alliance with Tigranes, king of Armenia, to whom he gave his daughter in marriage. Tigranes at his instigation drove out the new king of Cappadocia, who fled for refuge to Rome.

On the death of Nicomedes, king of Bithynia, B.C. 91, his son and successor Nicomedes was expelled from the kingdom by Mithridates. Nicomedes applied to the Romans for help, who commissioned M'. Aquilius and L. Cassius (Appian, Mithrid. 11), the governor of the province Asia, to restore both Nicomedes and Ariobarzanes. The Roman commissioners restored the two kings, and persuaded them to invade the dominions of Mithridates by promising them help from the Romans. Nicomedes unwisely followed the advice of the commissioners, and carried his ravages into the kingdom of Mithridates as far as Amastris (Amasra) on the coast of the Euxine. Mithridates upon this again expelled the unlucky king Ariobarzanes from Cappadocia; and the Roman commanders without waiting for the orders of the Senate began a campaign against Mithridates (B.C. 88). This was the beginning of the war between the king of Pontus and the Romans, which lasted twenty-six years, being ended in B.C. 63 by the death of Mithridates. Cicero in this oration (c. 3), delivered in B.C. 66, speaks of that being the twenty-third year of Mithridates' reign.

[1] Halm, Proleg. c. 2.

Mithridates was threatened by three Roman armies, and also by the king of Bithynia; but he was prepared for all of them. He defeated Nicomedes in a wide plain on the river Amnius, which was probably a branch of the Halys (Appian, Mithrid. 18). After this victory gained by inferior numbers Mithridates defeated the Roman commander M'. Aquilius, who fled to Pergamum. The two other Roman commanders, L. Cassius and Q. Oppius, retreated before the king of Pontus, who entered Phrygia and "overran Mysia and Asia, which the Romans had lately acquired; and sending round to the neighbouring parts he brought under him Lycia and Pamphylia, and the regions as far as Ionia" (Appian, Mithrid. 20). Both Oppius and Aquilius fell into the hands of Mithridates, who put Aquilius to a cruel death at Pergamum (App. Mithrid. c. 21), a punishment which was in some degree just, for he was the cause of the war.

On the news of the invasion of Western Asia, the Romans declared war against Mithridates, and L. Sulla obtained the provincia of Asia. But before Sulla could leave Italy, Mithridates had persuaded the Asiatics to rise against the Romans in Asia. Many thousand Romans and Italians, of all ages and sexes, were massacred with the most pitiless cruelty. The exact number that perished is not known: the ancient authorities vary from eighty thousand to one hundred and fifty thousand. But there is no where recorded a more bloody and cruel act of vengeance than this massacre in Asia (Appian, Mithrid. 22, &c.). L. Sulla, on arriving in Greece with his legions, defeated (B.C. 87) in Boeotia Archelaus the general of Mithridates, and took Athens, which was held for Mithridates by Aristion. He then passed into Asia, where he found Mithridates ready to accept the hard terms which were offered. Mithridates retired from the provinces of Asia, Bithynia, and Cappadocia (Livy, Epit. 83). Sulla, being in a hurry to return to Italy to look after his own interests, left L. Licinius Murena with the army in Asia. Murena renewed the war with Mithridates (B.C. 83) for no motive, as it seems, but to gratify his love of plunder and to have a triumph, which he obtained without having done any thing to deserve it. Sulla sent A. Gabinius to Murena with orders to desist from hostilities and to return to Italy. This is called the Second Mithridatic War. Mithridates made use of this leisure to subdue the inhabitants of the Bosporus, the people in the south part of the Crimea (Mithrid. c. 67), and he gave them his son Machares as king. Mithridates still held part of Cappadocia, but he gave it up on receiving an order from Sulla. The death of Sulla (B.C. 78) relieved Mithridates from all further fear, and his first measure was to persuade Tigranes to enter Cappadocia. Tigranes carried off a great number of the people, whom he settled in his new city of Tigranocerta. The Romans knew that Mithridates had instigated

Tigranes, but they were at the time too busy with the war in Spain against Sertorius to do any thing in the East. Sertorius, who was striving to raise all the world against the Romans, concluded an alliance with Mithridates, by which it was agreed that the king should have the provincia Asia, with Bithynia, Paphlagonia, and Galatia. This the third Mithridatic war was begun B.C. 74 by Mithridates invading Bithynia, which had come into the possession of the Romans on the death of Nicomedes III. L. Aurelius Cotta the governor of Bithynia fled to Chalcedon, where he was defeated by the invader. The Greek cities which had suffered so terribly under the Roman farmers of the taxes (publicani) and the extortion of the Roman money lenders, welcomed Mithridates as their deliverer. The king was engaged in the siege of the rich and populous city of Cyzicus, when L. Licinius Lucullus, to whom the command in the war had been given, arrived with five legions and encamped close to Mithridates (B.C. 73). He compelled Mithridates to raise the siege and to retreat precipitately, which was the beginning of a course of brilliant successes, which continued to B.C. 70, when Lucullus returned from the East into the provincia Asia (Appian, Mithrid. 83).

In B.C. 69 Lucullus again marched eastward to carry on the war in Armenia against Tigranes and Mithridates. This campaign was successful, but Lucullus was checked in his career by the mutinous spirit of some of his men, and by the intrigues of P. Clodius who came to the army. In B.C. 67 M'. Acilius Glabrio came into Asia to supersede Lucullus, but he proved himself an inefficient commander. Lucullus gave up part of his army to Glabrio (Pro Lege Manilia, c. 9), and as neither of them acted with any vigour, Mithridates recovered his original dominion of Pontus, and again invaded Cappadocia. Lucullus himself was still in Asia in command when Glabrio was superseded by Cn. Pompeius (Vell. Pat. ii. 33).

This was the state of affairs in Asia[2] when the tribune C. Manilius proposed a Lex for giving to Cn. Pompeius the provincia and army of Lucullus, together with Bithynia which Glabrio held, and empowering him to prosecute the war against Mithridates and Tigranes, and to retain the naval force with the same authority over the seas which he had in the war against the pirates. The power which it was proposed to confer on him was enormous, for in addition to the seas and countries placed under his command by the Lex Gabinia, this Lex of Manilius gave him Phrygia, Lycaonia, Galatia, Cappadocia, Cilicia, Colchi, and Armenia, with all the forces which Lucullus had employed against Mithridates and Tigranes. (Plut. Pomp. 30.) The nobility disliked the

[2] Halm, Proleg. c. 3.

Lex of Manilius, but as the people were for it, they were all afraid to oppose it openly, except Catulus and Hortensius. However the Lex was carried, and both C. Julius Caesar and Cicero, then praetor (B.C. 66), spoke in favour of it. Cicero's motives may have been something like what Dion Cassius imputes to him (xxxvi. 26), though Dion always puts the worst construction on every man's acts. Cicero wished to please the people, and we may suppose that he thought that he was furthering his own interests by recommending the Lex. He speaks of this affair in the De Lege Agrar. ii. 18; where he says enough to enable us to see what his motives were.

This speech of Cicero, as it has been well observed by Halm[a], is rather an address to the Roman people for the exaltation of their idol Pompeius than an argument in support of the Lex of Manilius. As a piece of rhetoric it has great merit, and Cicero himself has given us his own opinion of it. (Orator. c. 29.) Fronto in one of his letters to M. Antoninus (p. 112, ed. Nieb.) speaks as we might expect a rhetorician to speak of it, in rather extravagant terms: "Mihi profecto ita videtur neminem umquam neque Romana neque Graecorum lingua facundius in contione populi laudatum quam Cn. Pompeius in ista oratione laudatus est, ut mihi ille videatur non ita suis virtutibus ut Ciceronis laudibus Magnus cognominatus."

Halm has quoted the various MSS. authorities as to the title of this oration, from which it appears that it is named both 'De imperio Cn. or Gn. Pompeii,' 'Pro Lege Manilia;' and it has other titles. It is entitled 'De imperio Cn. Pompeii' by A. Gellius (i. 7), by Priscian, and by other ancient authorities. Halm observes that, so far as he knows, it is never entitled Pro Lege Manilia by any ancient authority.

The following are some of the MSS. to which Halm refers: P. the Turin Palimpsest; E. the Erfurt, now at Berlin; V. Cod. Pal., now Cod. Vat.; T. Cod. Tegernseensis; F. Cod. Fuldensis; B. Cod. Bernensis.

Halm's edition of this oration has a great many notes; some selected from the commentators, some his own. I have found them very useful.

[a] Halm, Proleg. p. 28.

M. TULLII CICERONIS

ORATIO

DE

IMPERIO GN. POMPEII

AD QUIRITES.

I. Quamquam mihi semper frequens conspectus vester multo jucundissimus, hic autem locus ad agendum amplissimus, ad dicendum ornatissimus est visus, Quirites, tamen hoc aditu laudis, qui semper optimo cuique maxime patuit, non mea me voluntas adhuc, sed meae vitae rationes ab ineunte aetate susceptae prohibuerunt. Nam quum antea per aetatem nondum hujus auctoritatem loci attingere auderem, statueremque nihil huc nisi perfectum ingenio, elaboratum industria, afferri oportere, omne meum tempus amicorum temporibus transmittendum putavi. Ita neque hic locus

1. *hic locus*] The Rostra. Comp. c. 18, 'in hunc ipsum locum;' and c. 24. See Vol. I. Verr. ii. 2. c. 42; the note on 'de superiore loco.' Cicero being now praetor could be said 'agere cum populo' (Vol. I. Verr. Act. Pr. c. 12). Any person might address the 'populus,' but only a 'magistratus' could be said 'agere cum populo.' Gellius has some remarks on this (xiii. 15): "ex his verbis Messalae manifestum est, aliud esse agere cum populo, aliud contionem habere: nam cum populo agere est rogare quid populum, quod suffragiis suis aut jubeat aut vetet; contionem autem habere, est verba facere ad populum sine ulla rogatione."

ab ineunte aetate] This seems to mean, as Manutius says, from the time when he commenced his career as an advocate, B.C. 81, when he spoke the oration Pro P. Quintio; for though he had been 'quaestor' and 'curule aedile,' he had not yet spoken from the Rostra.

temporibus] The 'occasions,' that is, the business and affairs of my friends. Comp. De Off. ii. 2: "tantum erat philosophiae loci, quantum superfuerat amicorum et rei publicae temporibus."

Ita neque] Thus explained by a German reviewer: 'by this conduct of mine you have lost nothing, and I have gained;' which expresses the meaning. 'In this

vacuus umquam fuit ab iis qui vestram caussam defenderent, et meus labor, in privatorum periculis caste integreque versatus, ex vestro judicio fructum est amplissimum consecutus. Nam quum propter dilationem comitiorum ter praetor primus centuriis cunctis renuntiatus sum, facile intellexi, Quirites, et quid de me judicaretis et quid aliis praescriberetis. Nunc quum et auctoritatis in me tantum sit quantum vos honoribus mandandis esse voluistis, et ad agendum facultatis tantum quantum homini vigilanti ex forensi usu prope quotidiana dicendi exercitatio potuit afferre, certe et, si quid auctoritatis in me est, ea apud eos utar qui eam mihi dederunt, et si quid in dicendo consequi possum, iis ostendam potissimum qui ei quoque rei fructum suo judicio tribuendum esse duxerunt. Atque illud in primis mihi laetandum jure esse video, quod in hac insolita mihi ex hoc loco ratione dicendi caussa talis oblata est in qua oratio deesse nemini possit. Dicendum est enim de Cn. Pompeii singulari eximiaque virtute. Hujus autem orationis difficilius est exitum quam principium invenire. Ita mihi non tam copia quam modus in dicendo quaerendus est.

II. Atque ut inde oratio mea proficiscatur unde haec omnis caussa ducitur, bellum grave et periculosum vestris vectigalibus

way,' he says, 'neither has this spot ever been without men to defend your interests,' &c. The Roman state had sustained no damage by his modest retirement, for there were plenty of persons to do what he had not attempted, and he had gained good opinion by his services to private persons. 'Caste integreque' might be taken in their plain sense; or they may refer, as Klotz supposes, to the practice of giving presents to the advocates for defending any cause however bad it was. The Lex Cincia De Donis et Muneribus (B.C. 204) was designed to stop this practice.

ter praetor] He had been declared elected three times, and his name was declared first. The Comitia had been twice interrupted owing to some informality, or alleged informality, which was usual; but it appears that Cicero had on both of the first occasions obtained the votes of more than half of the 'centuriae,' and had been declared elect, before the 'comitia' were interrupted and the names of the other candidates had been declared by the consul who held the 'comitia.' Compare In L. Pisonem, c. 1, 'me quum quaestorem,' &c.; and Plutarch, Cicero, c. 9.

aliis praescriberetis.] Thus explained by Manutius: that others should do as I had done, and serve their friends (suumque tempus amicorum temporibus transmitterent).—'ea apud eos:' the common reading; but the Erf. and another MS. omit 'ea;' and Halm approves of the omission for a reason which is not very clear. The following words 'qui eam' show, I think, that 'ea' ought to be in.—'ei quoque rei:' this refers to 'in dicendo.'

nemini possit.] 'possit,' E. V. There is a reading 'potest,' which few will defend. It is Latin; but 'potest' contains an independent affirmation.

2. *vestris vectigalibus*] This is generally supposed to mean 'your vectigalia,' though it may seem rather strange to say, 'to make war on your vectigalia.' Others suppose 'vectigales' to mean 'populi vectigales,' which interpretation is supposed to be confirmed by the word 'sociis' connected with it. Halm observes that 'vectigales et stipendiarii' often come together, as in Verr. ii. 4. c. 60. In the expression 'finitimum est vestris vectigalibus' Halm thinks that it is a perverse explanation to understand 'vectigalibus' to mean 'revenues;' and he only doubts whether we should take it to mean 'homines vectigales,' or 'agri vectigales'—both of which are Latin forms of expression. I do not think that Halm's

atque sociis a duobus potentissimis regibus infertur, Mithridate et Tigrane, quorum alter relictus, alter lacessitus, occasionem sibi ad occupandam Asiam oblatam esse arbitrantur. Equitibus Romanis, honestissimis viris, afferuntur ex Asia quotidie litterae, quorum magnae res aguntur in vestris vectigalibus exercendis occupatae; qui ad me, pro necessitudine quae mihi est cum illo ordine, caussam rei publicae periculaque rerum suarum detulerunt: Bithyniae, quae nunc vestra provincia est, vicos exustos esse complures; regnum Ariobarzanis, quod finitimum est vestris vectigalibus, totum esse in hostium potestate; Lucullum magnis rebus gestis ab eo bello discedere; huic qui successerit non satis esse paratum ad tantum bellum administrandum: unum ab omnibus sociis et civibus ad id bellum imperatorem deposci atque expeti, eundem hunc unum ab hostibus metui, praeterea neminem.

Caussa quae sit videtis; nunc quid agendum sit considerate. Primum mihi videtur de genere belli, deinde de magnitudine, tum de imperatore deligendo esse dicendum. Genus est belli ejusmodi quod maxime vestros animos excitare atque inflammare ad persequendi studium debeat, in quo agitur populi Romani gloria, quae vobis a majoribus quum magna in omnibus rebus, tum summa in re militari tradita est, agitur salus sociorum atque amicorum, pro qua multa majores vestri magna et gravia bella gesserunt, aguntur

interpretation is right; 'vectigalibus' depends directly on 'periculosum.'

Mithridate] The name is Mithradates on coins and inscriptions. The Romans seem to have written the name Mithridates, and also the Greek writers of Roman history. Thus the Romans changed the Greek Massalia into Massilia.—'relictus:' this applies to Mithridates, who had not been completely conquered. The Romans began the attack on his son-in-law and ally, Tigranes. —'ad occupandam Asiam:' he means the proconsular province of Asia. The Romans (B.C. 133), under the testamentary bequest of Attalus, king of Pergamum, took possession of his dominions (Excursus, the PROVINCE ASIA). Asia was one of the most productive provinces, and it suffered grievously from the Publicani or companies of Equites who farmed the revenues (Plutarch, Lucullus; Cicero, Ad Q. Fratrem, 1. 1). Cicero himself of equestrian origin ('municipalis eques,' Juv. Sat. ix. 238) was closely connected with the Equites, and always supported their interests. These men held the great capitals in their hands, and played a part in Roman politics not unlike that of the rich capitalists of modern times. Such a power may be dangerous to a state and it inevitably favours corruption and abuses. It is a power above all other powers, except the printing press. —'arbitrantur:' the reading of the better MSS. The common reading is 'arbitratur.'

res aguntur] 'whose interests are in peril.' This is a common form of expression, as in the De Am. c. 17: "in quibus eorum aut caput agatur aut fama." But in c. 6 there is 'quum de maximis vestris vectigalibus agatur,' which seems to have the same meaning as 'vectigalia aguntur,' though 'de re agitur' generally means simply the matter in hand, or the matter for consideration.

Bithyniae,] This kingdom also fell to the Romans by testamentary bequest on the death of the last king, Nicomedes III., B.C. 74 (Appian, Mithrid. c. 71; Liv. Epit. 93). Ariobarzanes was king of Cappadocia. See the Introduction.

huic qui successerit] This is the proper form in a dependent sentence, and not 'successit.' The incompetent successor was M'. Acilius Glabrio. (See Introd.)

certissima populi Romani vectigalia et maxima, quibus amissis et pacis ornamenta et subsidia belli requiretis, aguntur bona multorum civium, quibus est a vobis et ipsorum et rei publicae caussa consulendum. III. Et quoniam semper appetentes gloriae praeter ceteras gentes atque avidi laudis fuistis, delenda est vobis illa macula, Mithridatico bello superiore concepta, quae penitus jam insedit ac nimis inveteravit in populi Romani nomine; quod is qui uno die, tota in Asia, tot in civitatibus, uno nuntio atque una significatione litterarum cives Romanos necandos trucidandosque denotavit, non modo adhuc poenam nullam suo dignam scelere suscepit, sed ab illo tempore annum jam tertium et vicesimum regnat, et ita regnat ut se non Ponti neque Cappadociae latebris occultare velit, sed emergere ex patrio regno atque in vestris vectigalibus, hoc est, in Asiae luce versari. Etenim adhuc ita nostri cum illo rege contenderunt imperatores ut ab illo insignia victoriae, non victoriam reportarent. Triumphavit L. Sulla; triumphavit L. Murena de Mithridate, duo fortissimi viri et summi imperatores; sed ita triumpharunt ut ille pulsus superatusque regnaret. Verumtamen illis imperatoribus laus est tribuenda quod egerunt; venia danda quod reliquerunt: propterea quod ab eo bello Sullam in Italiam res publica, Murenam Sulla revocavit. IV. Mithridates autem omne reliquum tempus non ad oblivionem ve-

3. *macula,*] This is the great massacre of the Italians in Asia in the time of Mithridates (Introd.). — 'concepta:' on the authority of E. V., as we have in Pro Rosc. Am. c. 24, 'si qua macula concepta est,' and Verr. Act. i. c. 16, 'conceptam turpitudinem.' The other reading is 'suscepta.' Either is Latin; for there is 'ne qua . . macula . . suscipiatur' in the oration Pro Fonteio, c. 16, and in the Pro Murena, c. 5, a like expression occurs.

poenam—suscepit,] Halm says that he has found no other example of this use of 'suscipere.'—'vectigalibus nostris:' this is cited by Halm as an instance in which 'vectigalia' means not what came to the Romans from the provinces, but the lands or country; and he compares Verr. ii. 3. c. 7. It is true that Cicero does mean the lands or country, but he indicates this by a term which means another thing, as I think. —'in Asiae luce:' in the Pro Rosc. Am. c. 6 there is 'in foro et in ore omnium quotidie versabatur.' The metaphor in both cases only expresses great publicity; to be where there are many persons to see.

triumphavit L. Murena &c.] See the Introd.

quod egerunt;—quod reliquerunt:] Benecke, quoted by Halm, says that 'quod' is the 'conjunctio causalis.' And he adds that the 'viri docti' seem to have been chiefly misled by the active verbs having no object after them, and they forgot that transitive verbs are sometimes thus used absolutely, when the action only is contemplated and not the thing to which the action is directed. Accordingly he explains 'quod egerunt' to be equivalent to 'quod non otiosi . . . . fuerunt.' He has given the right meaning; but 'quod' is still the relative. I don't know what the 'viri docti' took it to be.

4. *omne reliquum tempus*] After the departure of Murena. The following words have been misunderstood by some of the commentators, which is a reason for explaining them. 'Mithridates employed all the period which followed not in trying to make the old war forgotten, but in preparing for a new war.' It is easy to give a meaning to this. Halm has understood the passage right.

teris belli, sed ad comparationem novi contulit; qui posteaquam maximas aedificasset ornassetque classes, exercitusque permagnos quibuscumque ex gentibus potuisset comparasset, et se Bosporanis, finitimis suis, bellum inferre simularet, usque in Hispaniam legatos ac litteras misit ad eos duces quibuscum tum bellum gerebamus, ut, quum duobus in locis disjunctissimis maximeque diversis uno concilio a binis hostium copiis bellum terra marique gereretur, vos ancipiti contentione districti de imperio dimicaretis. Sed tamen alterius partis periculum, Sertorianae atque Hispaniensis, quae multo plus firmamenti ac roboris habebat, Cn. Pompeii divino consilio ac singulari virtute depulsum est; in altera parte ita res a L. Lucullo, summo viro, est administrata ut initia illa rerum gestarum magna atque praeclara non felicitati ejus, sed virtuti, haec autem extrema, quae nuper acciderunt, non culpae, sed fortunae tribuenda esse videantur. Sed de Lucullo dicam alio loco, et ita dicam, Quirites, ut neque vera laus ei detracta oratione nostra, neque falsa afficta esse videatur. De vestri imperii dignitate atque gloria, quoniam is est exorsus orationis meae, videte quem vobis animum suscipiendum putetis.

V. Majores nostri saepe mercatoribus aut naviculariis nostris injuriosius tractatis bella gesserunt; vos, tot millibus civium Romanorum uno nuntio atque uno tempore necatis, quo tandem animo esse debetis? Legati quod erant appellati superbius, Corinthum patres

posteaquam—aedificasset] Halm has a long note on this passage. Benecke knows no other example of this use of 'posteaquam;' for he does not admit 'posteaquam .... minaretur' (Pro Cluentio, c. 64) to be one; it ought to be 'postea quum.' Halm refers to an example in the De Legg. ii. 25, which Manutius corrected by writing 'postea quum,' which Bake (note, p. 574) approves.

Bosporanis,] The people on the Cimmerian Bosporus, on the south-east coast of the Crimea. There are two notes on the Bosporus in Wolf's edition of the oration of Demosthenes against Leptines (pp. 249, 255). The kings of the Bosporus had also possessions on the Asiatic side of the Bosporus, now the strait of Yeni Kalé.

The historical facts about the armaments against the Bosporani, and the negotiations with Sertorius do not altogether agree with the statements in Appian. (See the Introduction.)

usque in Hispaniam] Comp. Vol. I. Verr. ii. 1. c. 34; and Plutarch, Sertorius, c. 23.

Cn. Pompeii] Pompeius was sent against Sertorius in Spain in B.C. 76, and he carried on the war till the death of Sertorius, B.C. 72; after which event the war was soon ended.

5. *Majores vestri*] Halm has a long note on the question whether we should read 'vestri' or 'nostri,' two words which are continually confounded. The evidence of the MSS. is said to be in favour of 'vestri.' It is not a very important matter.—'aut naviculariis:' comp. Verr. ii. 5. c. 58, 'quot bella arbitramini,' &c. The words 'tot millibus' allude to the massacre of the Italians in Asia. (See Introd.)

Legati] Cicero speaks of the 'legati' being only insulted; but the truth is much beyond that. The story is in Polybius (38. c. 4, ed. Bekker). Some Roman 'legati' were sent to Corinth, where a meeting of the Achaeans happened to be held at that time. The 'legati' addressed the meeting, and exhorted them to keep on friendly terms with the Romans. They were ill received,

vestri, totius Graeciae lumen, exstinctum esse voluerunt: vos eum regem inultum esse patiemini, qui legatum populi Romani consularem vinculis ac verberibus atque omni supplicio excruciatum necavit? Illi libertatem imminutam civium Romanorum non tulerunt: vos vitam ereptam negligetis? Jus legationis verbo violatum illi persecuti sunt: vos legatum omni supplicio interfectum relinquetis? Videte ne, ut illis pulcherrimum fuit tantam vobis imperii gloriam tradere, sic vobis turpissimum sit, id quod accepistis tueri et conservare non posse. Quid, quod salus sociorum summum in periculum ac discrimen vocatur, quo tandem animo ferre debetis? Regno est expulsus Ariobarzanes rex, socius populi Romani atque amicus: imminent duo reges toti Asiae, non solum vobis inimicissimi, sed etiam vestris sociis atque amicis, civitates autem omnes, cuncta Asia atque Graecia vestrum auxilium exspectare propter periculi magnitudinem coguntur: imperatorem a vobis certum deposcere, quum praesertim vos alium miseritis, neque audent neque se id facere summo sine periculo posse arbitrantur. Vident et sentiunt hoc idem quod vos, unum virum esse in quo summa sint omnia, et eum propter esse, quo etiam carent aegrius: cujus adventu ipso atque nomine, tametsi ille ad maritimum bellum venerit, tamen impetus hostium repressos esse intelligunt ac retardatos. Hi vos, quoniam libere loqui non licet, tacite rogant ut se quoque sicut ceterarum provinciarum socios dignos existimetis quorum salutem tali viro commendetis; atque hoc etiam magis, quod

hooted, and expelled from the meeting, for there were present, as the historian adds, a number of the working folks and artizans. There are other versions of the story, some of which make the treatment of the 'legati' much worse (Strabo, p. 381; Liv. Epit. 51; and the Schol. quoted by Halm). In the war which followed Corinth was taken and destroyed by the consul L. Mummius, B.C. 146 (Liv. Epit. 52).

legatum — consularem] This was M'. Aquilius (Appian, Mithrid. c. 21; Livy, Epit. 78; and the Introduction). This M'. Aquilius was consul B.C. 101, in which year he put down the insurrection of the slaves in Sicily.

Jus legationis] See Vol. I. Verr. ii. 1. c. 33; and Caesar, B. G. iii. 16: "In quos eo gravius Caesar vindicandum statuit quo diligentius in reliquum tempus a barbaris jus legatorum conservaretur."—'relinquetis,' that is, 'leave unrevenged:' see Pro Caecina, c. 3, 'relinqui putet oportere.'

Ariobarzanes] See the Introd. This was the king whom Pompeius restored. There is a silver coin of this Ariobarzanes with the legend: ΒΑΣΙΛΕΩΣ ΑΡΙΟΒΑΡΖΑΝΟΥΣ ΦΙΛΟΡΩΜΑΙΟΥ ΕΥΣΕΒΟΥΣ (Ursini). These titles of Ariobarzanes occur in one of Cicero's letters (Ad Fam. xv. 2). The Romans conferred these honourable titles on any king, whom they wished to conciliate, even a German barbarian. (Caesar, B. G. i. 43.)

cuncta Asia] This is supposed by Halm and others to be the ablative case; and accordingly they take away the point after 'omnes.'

et eum propter esse,] 'Propter' is the reading of the Erf., of which the common reading 'prope' is probably the interpretation (Wunder). Pompeius was already in those parts (Introd.).

libere loqui] Through fear of the Proconsul Acilius, Manutius says; and I suppose that he is right.

ceteros in provinciam ejusmodi homines cum imperio mittimus, ut, etiamsi ab hoste defendant, tamen ipsorum adventus in urbes sociorum non multum ab hostili expugnatione differant. Hunc audiebant antea, nunc praesentem vident tanta temperantia, tanta mansuetudine, tanta humanitate, ut ii beatissimi esse videantur apud quos ille diutissime commoratur. VI. Quare, si propter socios, nulla ipsi injuria lacessiti, majores nostri cum Antiocho, cum Philippo, cum Aetolis, cum Poenis bella gesserunt, quanto vos studio convenit injuriis provocatos sociorum salutem una cum imperii vestri dignitate defendere, praesertim quum de maximis vestris vectigalibus agatur? Nam ceterarum provinciarum vectigalia, Quirites, tanta sunt ut iis ad ipsas provincias tutandas vix contenti esse possimus: Asia vero tam opima est ac fertilis, ut et ubertate agrorum et varietate fructuum et magnitudine pastionis, et multitudine earum rerum quae exportentur, facile omnibus terris antecellat. Itaque haec vobis provincia, Quirites, si et belli utilitatem et pacis dignitatem retinere vultis, non modo a calamitate sed etiam a metu calamitatis est defendenda. Nam in ceteris rebus, quum venit calamitas, tum detrimentum accipitur: at in vectigalibus non solum adventus mali sed etiam metus ipse affert calamitatem. Nam quum hostium copiae non longe absunt, etiamsi irruptio facta nulla sit, tamen pecua relinquuntur, agricultura deseritur,

ipsorum adventus] Compare Cicero, Ad Q. Fratrem, i. 1. c. 2: "Quid autem reperiri tam eximium aut tam expetendum potest quam . . . non itineribus tuis perterreri homines, non sumptu exhauriri, non adventu commoveri," &c.

As to the plural and singular 'adventus' see Vol. I. Verr. ii. 1. c. 19.

commoratur.] Ernesti says that it should be 'commoretur;' but, as Halm observes, Cicero is giving his own opinion, and therefore it ought to be the indicative.

6. *cum Antiocho,*] The war with Philip V. of Macedonia was before the war with Antiochus. The war with Philip began B.C. 200. The Romans had an old quarrel with him, and they commenced the war against him at the request of the Athenians (Livy, xxxi. 1).

The war of the Romans with Antiochus III. of Syria began in B.C. 192. He had passed over into Greece and was joined by the Aetolians. Antiochus and the Aetolians attempted to detach the Achaeans and other Greeks from the Roman alliance, and so the war began (Liv. xxxv. 43, &c.).

The first war with the Poeni was on account of Messana in Sicily; the second on account of the siege of Saguntum, and the third on account of the African king Masinissa, the ally of the Romans.

tanta sunt &c.] 'are hardly enough to supply us with the means of protecting the provinces themselves.' This use of 'tantum' presents no real difficulty. There is an example in Caesar, B. G. vi. 35: "praesidii tantum est ut ne murus quidem cingi possit," and in B. C. iii. 2.

quae exportentur,] This is the reading of E. V. B.; and it may be translated 'the amount of things for exportation.' Halm and others prefer 'exportantur,' 'things which are exported.'

pecua] This reading is not fonnd in any of the manuscripts of Cicero, all of which have 'pecora;' but it is plain from Servius (Virg. Georg. iii. 64) that he had 'pecua' in his MS. of Cicero: "pecua, ut ait in Pompeiana Cicero, ab eo, quod est pecu, venit, ut genu, genua." There is a long note in Halm on this word.

mercatorum navigatio conquiescit. Ita neque ex portu neque ex decumis neque ex scriptura vectigal conservari potest. Quare saepe totius anni fructus uno rumore periculi atque uno belli terrore amittitur. Quo tandem igitur animo esse existimatis aut eos qui vectigalia nobis pensitant, aut eos qui exercent atque exigunt, quum duo reges cum maximis copiis propter adsint? quum una excursio equitatus perbrevi tempore totius anni vectigal auferre possit? quum publicani familias maximas, quas in saltibus habent, quas in agris, quas in portubus atque custodiis, magno periculo se habere arbitrentur? Putatisne vos illis rebus frui posse, nisi eos qui vobis fructui sunt conservaveritis non solum, ut ante dixi, calamitate, sed etiam calamitatis formidine liberatos? VII. Ac ne illud quidem vobis negligendum est, quod mihi ego extremum proposueram quum essem de belli genere dicturus, quod ad multorum bona civium Romanorum pertinet, quorum vobis pro vestra sapientia, Quirites, habenda est ratio diligenter. Nam et publicani, homines honestissimi atque ornatissimi, suas rationes et copias in illam provinciam contulerunt; quorum ipsorum per se res et for-

nobis pensitant,] There is the better MSS. authority for 'nobis,' but some critics would prefer 'vobis.' Cicero probably used 'nos' and 'vos,' 'noster' and 'vester' often indifferently in this oration. This is a matter that can never be settled; and it is not very important.

qui exercent] In c. 2: "in vestris vectigalibus exercendis occupatae." The 'qui exercent' are the Equites, the members of the 'societas' for farming the revenues. The 'qui exigunt' are the managers for the 'societas' in Asia, and their servants (Halm).

propter adsint:] There is the better authority for 'propter.' The other reading is 'prope.' Ursini says "veteres libri *absint*, quae lectio ferri potest." Halm observes that 'propius abesse' occurs in Cicero, but not 'prope abesse.'

in saltibus] 'In salinis,' Halm. It is said that all the MSS. have 'in salinis;' and this is a reason for keeping it. 'Saltibus' is Hotmann's conjecture. If 'salinis' is right, those of Phrygia may be meant. But 'saltibus' or 'silvis' is the more probable reading, for this word represents the 'scriptura,' the 'in agris' represents the 'decumae,' and the 'in portubus' represents the 'portoria.' Klotz, who has 'silvis,' thinks that 'salinis' is the right reading, because the Roman state derived a revenue (vectigal) from 'salinae.' We might if this reason were sufficient put in any other word which expressed a source of Roman revenue. The salt pans were farmed, as is well known; but in this passage the context leads to expect one of the ordinary branches of revenue, that from the pasture grounds, to be mentioned, instead of one of the less common branches of revenue. (Varro, R. R. iii. 1.)

The meaning of 'in custodiis' is doubtful. Those 'in portubus' are the collectors of the duties in the ports ('qui in operis erant,' Verr. ii. 3. c. 41). But there were 'portoria' paid at other places besides ports, and the 'custodiae' may mean the collectors in those places, the men who had to watch that the 'portoria' were not evaded.

As to other matters contained in this and in the following chapter, see the Excursus, Asia.

7. *et publicani,*] This 'et' is to be connected with 'deinde ex ceteris,' &c., 'both Publicani, and men of other classes.'—'rationes' is difficult to render. Cicero means that they have carried their capital into Asia to employ it there. If he had used 'copias' only, that would not have expressed what the union of 'rationes' and 'copiae' does. Nagelsbach (quoted by Halm) translates it, "they have transferred their interests (Halm suggests speculations) and their capital into that province."

tunae vobis curae esse debent: etenim si vectigalia nervos esse rei publicae semper duximus, eum certe ordinem, qui exercet illa, firmamentum ceterorum ordinum recte esse dicemus: deinde ex ceteris ordinibus homines navi atque industrii partim ipsi in Asia negotiantur, quibus vos absentibus consulere debetis, partim eorum in ea provincia pecunias magnas collocatas habent. Est igitur humanitatis vestrae magnum eorum civium numerum calamitate prohibere; sapientiae videre multorum civium calamitatem a re publica sejunctam esse non posse. Etenim primum illud parvi refert, nos publicanis amissa vectigalia postea victoria recuperare; neque enim iisdem redimendi facultas erit propter calamitatem, neque aliis voluntas propter timorem. Deinde, quod nos eadem Asia atque idem iste Mithridates initio belli Asiatici docuit, certe id quidem calamitate docti memoria retinere debemus. Nam tum quum in Asia res magnas permulti amiserant, scimus Romae solutione impedita fidem concidisse. Non enim possunt una in civitate multi rem ac fortunas amittere ut non plures secum in eandem trahant calamitatem. A quo periculo prohibete rem publicam, et mihi credite id quod ipsi videtis: haec fides atque haec ratio pecuniarum, quae Romae, quae in foro versatur, implicata est cum illis pecuniis Asiaticis et cohaeret. Ruere illa non possunt ut haec non eodem labefacta motu concidant. Quare videte num dubitandum vobis sit omni studio ad id bellum incumbere, in quo gloria nominis vestri, salus sociorum, vectigalia maxima, fortunae plurimorum civium conjunctae cum re publica defendantur.

esse—duximus,] So in Caesar, B. G. iv. 30; and Verr. ii. 5. c. 55.—'ex ceteris ordinibus:' here a difficulty has been made. If we translate it 'men of all other classes or degrees,' it will simply mean all except those whom he has mentioned, the Publicani.—'navi:' see the note Vol. I. Verr. ii. 3. c. 21, on 'gnavus.' Some of the 'negotiatores' were in the 'provincia;' others had their own and their friends' capitals employed there.

partim] Comp. Pro Fonteio, c. 12; In Vatin. c. 7; Livy, 24. c. 13; Caesar, B. G. ii. 1; Gellius, x. 13: "*Partim hominum venerunt*, plerumque dicitur quod significat, *pars hominum venit*, id est, *quidam homines*, nam *partim* hoc in loco adverbium est: neque in casus inclinatur, sicuti *cum partim hominum* dici potest, id est, cum quibusdam hominibus, et quasi cum quadam parte hominum."

nos publicanis amissa] 'nos' is the reading of the Erf. The common reading is 'vos.' The text is probably corrupt. Garatoni says "Ut restituam *publicanis amissis*, consensu moveor manuscriptorum;" and Halm follows him, explaining 'amissis' to be 'perditis,' and using a most absurd argument in defence of this reading, which reading is pure nonsense. Baiter, who also has in his text 'publicanis amissis,' adds in the footnotes (nos publica his amissis [vectigalia] postea. Th. Mommsenius). This is ingenious, and Mommsen may have hit on the true reading. As to this use of 'publica,' see Vol. I. Verr. ii. 3. c. 71, 'et sex publicorum.'

ut haec non—concidant.] This form of expression occurs sometimes without a previous 'ita' or 'tali modi.' There is another example just before: "Non enim possunt —ut non." There is a similar example in the Pro Cluentio, the beginning of c. 64; but that is not a negative sentence.

VIII. Quoniam de genere belli dixi, nunc de magnitudine pauca dicam. Potest enim hoc dici: belli genus esse ita necessarium ut sit gerendum; non esse ita magnum ut sit pertimescendum. In quo maxime laborandum est ne forte vobis, quae diligentissime providenda sunt, contemnenda esse videantur. Atque ut omnes intelligant me L. Lucullo tantum impertire laudis, quantum forti viro et sapienti homini et magno imperatori debeatur, dico ejus adventu maximas Mithridatis copias omnibus rebus ornatas atque instructas fuisse, urbemque Asiae clarissimam nobisque amicissimam Cyzicenorum obsessam esse ab ipso rege maxima multitudine et oppugnatam vehementissime, quam L. Lucullus virtute, assiduitate, consilio summis obsidionis periculis liberavit: ab eodem imperatore classem magnam et ornatam, quae ducibus Sertorianis ad Italiam studio inflammata raperetur, superatam esse atque depressam: magnas hostium praeterea copias multis praeliis esse deletas, patefactumque nostris legionibus esse Pontum, qui antea populo Romano ex omni aditu clausus fuisset: Sinopen atque Amisum, quibus in oppidis erant domicilia regis, omnibus rebus ornatas atque refertas, ceterasque urbes Ponti et Cappadociae permultas uno aditu adventuque esse captas: regem spoliatum regno patrio atque avito ad alios se reges atque ad alias gentes supplicem contulisse: atque haec omnia salvis populi Romani sociis atque integris vectigalibus esse gesta. Satis opinor haec esse laudis, atque ita, Quirites, ut hoc vos intelligatis, a nullo istorum qui huic obtrectant legi atque caussae L. Lucullum similiter ex hoc loco esse laudatum. IX. Requiretur fortasse nunc quemadmodum, quum haec ita sint, re-

8. *ne forte vobis.*] The curious may see the long note in Halm on the question whether we should have 'vobis' or 'a vobis.'

Cyzicenorum] See the Introd.; and the passages in Plutarch, Lucullus, c. 9, and Appian, Mithrid. c. 72. The history of this great city is briefly told in Smith's Dict. of Ancient Geog. (Cyzicus.) A sandy isthmus now connects Cyzicus with the mainland. It was not within the Roman province of Asia at this time; but it was friendly to the Romans.

studio inflammata] 'studio atque odio inflammata,' Halm, Baiter, on the authority of one MS.

classem — depressam:] This was the naval battle near Tenedos (Pro Archia, c. 9). The victories of Lucullus (multis praeliis) are told in his life by Plutarch (c. 11, &c.), and Appian, Mithrid. c. 75.

Sinopen &c.] Sinope and Amisus were two of the old Greek colonies on the Euxine, which had fallen into the hands of Mithridates. This king was a native of Sinope. The capture of these places by Lucullus is told in Plutarch, Lucullus, c. 19. 23; Appian, Mithrid. c. 83.—'integris vectigalibus:' the meaning of these words is not quite clear. The Roman 'socii' were protected, and the 'vectigalia' were entire; which should mean that they came in, and were collected just as before. It is differently explained by some.

atque ita,] He says, "I think this is praise enough, and that I have praised Lucullus in such a way that you will feel this, that," &c. 'Hoc' is thought to be doubtful by Halm, who places it thus [hoc]; but it is right. The 'istorum' are Hortensius and Catulus, among others (Introd.).

liquum possit magnum esse bellum. Cognoscite, Quirites. Non enim hoc sine caussa quaeri videtur. Primum ex suo regno sic Mithridates profugit, ut ex eodem Ponto Medea illa quondam profugisse dicitur; quam praedicant in fuga fratris sui membra in iis locis qua se parens persequeretur dissipavisse, ut eorum collectio dispersa maerorque patrius celeritatem persequendi retardaret. Sic Mithridates fugiens maximam vim auri atque argenti pulcherrimarumque rerum omnium, quas et a majoribus acceperat et ipse bello superiore ex tota Asia direptas in suum regnum congesserat, in Ponto omnem reliquit. Haec dum nostri colligunt omnia diligentius, rex ipse e manibus effugit. Ita illum in persequendi studio maeror, hos laetitia tardavit. Hunc in illo timore et fuga Tigranes, rex Armenius, excepit, diffidentemque rebus suis confirmavit, et afflictum erexit, perditumque recreavit. Cujus in regnum posteaquam L. Lucullus cum exercitu venit, plures etiam gentes contra

9. *Medea illa*] The Scholiast finds some aptness in the comparison, and others also in this, that Medea was from Pontus. Each man has his taste. The comparison would seem to most people very ridiculous. The story was well known, we may suppose, to all the Romans, or Cicero would be without excuse. In his treatise De Nat. Deorum (iii. c. 26) he has quoted some trochaic verses from an old poet, which he manifestly had in his memory when he wrote what is here in the text. Part of them are as follows:—

"Ut, dum nati dissipatos artus captaret parens,
Ipsa interea effugeret, illum ut maeror tardaret sequi,
Sibi salutem ut familiari pareret parricidio."

collectio dispersa] These words have caused the critics trouble. Goerenz would have altered the text to 'eorum collectio dispersorum.' If the order of Latin words were observed, many difficulties would be prevented. Cicero says 'eorum collectio,' which is plain enough 'the collecting of them;' to this he adds 'dispersa.' The whole means 'the collecting of them being made in various places.' We fix to 'dispersed' the notion of the various objects only; whereas the Romans could attach 'dispersa' also to the notion of the act of putting the various scattered objects together. A passage in the Gallic War (viii. 7) has been compared with this: "pabulatione autem, quae propter anni tempus quum exigua tum disjecta esset." The German commentators of the present day refine too much on matters. Halm says: "Propterea autem orator *collectio dispersa* dicere maluit quam *collectio dispersorum*, quod ita species longioris morae audientium animis magis subjicitur."

Mithridates fugiens] Plutarch (Lucullus, c. 17) has a story of Mithridates being nearly taken: "the horse which was carrying Mithridates was just within reach of his pursuers, when it happened that one of the mules which was conveying the king's gold either fell into the hands of the enemy accidentally, or was purposely thrown in their way by the king's orders, and while the soldiers were plundering it and getting together the gold and fighting with one another, they were left behind."

illum in persequendi] 'Illum' is Aetes the father of Medea, as Hotmann rightly explains it; and 'hos' the soldiers of Lucullus.

Tigranes,—excepit] He did not receive him at first, as Plutarch says (Lucullus, c. 22). Cicero's historical sketch is probably not very exact. The events were too recent to be accurately known. The invasion of Armenia by Lucullus is described by Plutarch (Lucullus, c. 24, &c.). Tigranes was joined by Medi, Adiabeni, Arabes, Albani, and others. Lucullus took Tigranocerta (Sert., Lat. 38, on a branch of the Tigris) the city of Tigranes, and he found a rich booty in it (Lucullus, c. 29).

imperatorem nostrum concitatae sunt. Erat enim metus injectus iis nationibus quas numquam populus Romanus neque lacessendas bello neque tentandas putavit. Erat etiam alia gravis atque vehemens opinio, quae animos gentium barbararum pervaserat, fani locupletissimi et religiosissimi diripiendi caussa in eas oras nostrum esse exercitum adductum. Ita nationes multae atque magnae novo quodam terrore ac metu concitabantur. Noster autem exercitus, tametsi urbem ex Tigranis regno ceperat, et praeliis usus erat secundis, tamen nimia longinquitate locorum ac desiderio suorum commovebatur. Hic jam plura non dicam. Fuit enim illud extremum, ut ex iis locis a militibus nostris reditus magis maturus quam processio longior quaereretur. Mithridates autem et suam manum jam confirmarat, et eorum qui se ex ipsius regno collegerant, et magnis adventitiis auxiliis multorum regum et nationum juvabatur. Jam hoc fere sic fieri solere accepimus, ut regum afflictae fortunae facile multorum opes alliciant ad misericordiam, maximeque eorum qui aut reges sunt, aut vivunt in regno, ut iis nomen regale magnum et

quae animos] This is the reading of E. V. The rest of the MSS. have 'quae per animos gentium pervaserat.' The critics cannot agree which is best. There is however no doubt that 'animos pervaserat' is Latin.

fani locupletissimi] It is not certain what temple he means; but it is probably Comana. There were two famous temples of this name, both dedicated to the same goddess, Enyo, as Strabo (p. 535) names her, and Bellona, as the Romans called her. The Comana Pontica was probably on a site now called *Gumenek*, on the river Iris, a few miles north-east of Tocat. The other Comana was in Cappadocia, in the division called Cataonia, in a deep valley and on the river Sarus (Sihoon). Al Bostan on the Sihoon is generally supposed to represent this Comana. Appian (Mithrid. c. 64) says that Murena plundered Comana in Cappadocia; a passage which Halm incorrectly interprets as referring to the Comana of Pontus. It is impossible to draw any historical certainty from Cicero's narrative in this speech. He says that after Lucullus invaded the kingdom of Tigranes, there was fear among the barbarians that he had come into those parts to plunder this sacred and wealthy temple. Lucullus crossed the Euphrates to reach the kingdom of Tigranes, and it was not till he came so near that the barbarous nations were alarmed. If then Cicero's narrative is correct, it was not the temple of Comana, either Pontic or Cappadocian, that the people feared about.

terrore ac metu] The following is a note of Benecke: "Servius ad Aen. xi. 357 inter utrumque voc. hoc interesse statuit, ut *terror* sit qui inferatur, *metus* quem habeant timentes." I suppose this is true. 'Metus' at least is in the person who is frightened, 'metus injectus iis nationibus;' and this is the sense of 'metus' in the Edictum, "Quod metus caussa gestum erit" (Dig. 4. Tit. 2).

Hic jam plura] Cicero here stops short, and does not tell us the true reason why Lucullus did not prosecute his success. The reason was the mutinous temper of his soldiers, whom he could not keep in order. The story is told by Plutarch (Lucullus, c. 33).

et eorum, qui—juvabatur] On the readings of this passage those who are curious may consult Halm's note.

Jam hoc] This is the true order, not 'hoc jam.' Compare Pro Cluentio, c. 16: 'Jam hoc fere satis omnes,' &c.

ut iis nomen regale] This is the reading of the best MSS. The common reading is 'quod regale iis nomen.' There is better authority for 'his' than 'iis.' Halm has 'his,' which he refers to 'vivunt in regno.' I prefer 'iis,' and I refer it to 'eorum qui.' Benecke thinks that 'iis' or 'his' is not genuine, for he considers that Cicero is expressing a general opinion. But this critic would expunge a great many words in this oration which he considers superfluous, though Cicero did not; for we must take

sanctum esse videatur. Itaque tantum victus efficere potuit quantum incolumis numquam est ausus optare. Nam quum se in regnum recepisset suum, non fuit eo contentus, quod ei praeter spem acciderat, ut illam posteaquam pulsus erat terram umquam attingeret, sed in exercitum vestrum, clarum atque victorem, impetum fecit. Sinite hoc loco, Quirites, sicut poetae solent qui res Romanas scribunt, praeterire me nostram calamitatem, quae tanta fuit ut eam ad aures Luculli imperatoris non ex praelio nuntius, sed ex sermone rumor afferret. Hic in illo ipso malo gravissimaque belli offensione L. Lucullus, qui tamen aliqua ex parte iis incommodis mederi fortasse potuisset, vestro jussu coactus, quod imperii diuturnitati modum statuendum vetere exemplo putavistis, partem militum qui jam stipendiis confecti erant dimisit, partem Glabrioni tradidit. Multa praetereo consulto, sed ea vos conjectura perspicite, quantum illud bellum factum putetis quod conjungant reges potentissimi, renovent agitatae nationes, suscipiant integrae gentes, novus imperator noster accipiat, vetere exercitu pulso. X. Satis mihi multa verba fecisse videor, quare esset hoc bellum genere ipso necessa-

the best MSS. to represent what Cicero did say. If they do not, how are we to know what he did say?

sicut poetae] He is supposed to allude to the Punic war of Naevius and the Annals of Ennius.—'calamitatem:' he alludes to the defeat of M. Fabius and C. Triarius. While Lucullus was besieging Nisibis in Mesopotamia (B.C. 68), Mithridates, who had suddenly retired into Pontus, defeated Fabius who was in command there, and shut him up in Cabira. Fabius was saved by Triarius. (Appian, Mithrid. c. 88; Plutarch, Lucullus, c. 35; Dion, 35, c. 9, &c.) In the next year Triarius was defeated by Mithridates with great loss at Gaziura, a town in Pontus, on the Iris. Lucullus arrived from Mesopotamia after the battle, but he was not able to do any thing. As to the meaning of 'calamitas,' see Vol. I. Verr. ii. 3. c. 98.

imperii diuturnitati] In Livy (iv. 24) the dictator Mam. Aemilius says: "Maximam libertatis P. R. custodiam esse, si magna imperia diuturna non essent et temporis modus imponeretur quibus juris imponi non posset." Comp. Cic. De Re Publica ii. 12. But these rules, as Klotz says, were now no longer observed, and the real cause of the recall of Lucullus was the hostility of his enemies at Rome. Machiavelli (Discorsi, &c. iii. c. 24) has a short chapter, entitled "La prolungazione degli imperj fece serva Roma," which is wise, as usual with him. He attributes the fall of the republic to the Agrarian disputes, and to the prolongation of military command. This prolongation, he says, caused fewer men to be practised in command, and so reputation came to be limited to few; and further, a citizen having been for some time in command of an army, gained it over to him and made partizans of the soldiers, and consequently in course of time the army rejected the authority of the Senate and recognised the general as their head. "Per questo Silla e Mario poterono trovare soldati che contro al bene pubblico li seguitassero; per questo Cesare potette occupare la patria."

stipendiis confecti] There is no authority for 'stipendiis confectis,' as Aldus has it, who has been followed by many editors. 'Stipendiis confecti' is as intelligible as 'vulneribus confecti,' which is Latin. There is also in Livy (27. c. 9): "fremitus enim inter Latinos sociosque in conciliis ortus: decimum annum delectibus, stipendiis exhaustos esse;" and Livy, 42. c. 33.

sed ea vos—putetis] This word 'ea' has caused the critics much trouble. Ernesti thought that 'ea' could not stand, because it manifestly refers to what goes before. This is true. But as I cannot see any difficulty in the passage, I leave the reader to find it out if he can.

rium, magnitudine periculosum: restat ut de imperatore ad id bellum deligendo ac tantis rebus praeficiendo dicendum esse videatur.

Utinam, Quirites, virorum fortium atque innocentium copiam tantam haberetis ut haec vobis deliberatio difficilis esset, quemnam potissimum tantis rebus ac tanto bello praeficiendum putaretis. Nunc vero quum sit unus Cn. Pompeius, qui non modo eorum hominum qui nunc sunt gloriam, sed etiam antiquitatis memoriam virtute superarit, quae res est quae cujusquam animum in hac caussa dubium facere possit? Ego enim sic existimo, in summo imperatore quattuor has res inesse oportere, scientiam rei militaris, virtutem, auctoritatem, felicitatem. Quis igitur hoc homine scientior umquam aut fuit aut esse debuit? qui e ludo atque e pueritiae disciplinis, bello maximo atque acerrimis hostibus ad patris exercitum atque in militiae disciplinam profectus est; qui extrema pueritia miles in exercitu fuit summi imperatoris, ineunte adolescentia maximi ipse exercitus imperator; qui saepius cum hoste conflixit quam quisquam cum inimico concertavit, plura bella gessit quam ceteri legerunt, plures provincias confecit quam alii concupiverunt; cujus adolescentia ad scientiam rei militaris non alienis praeceptis

10. *eorum hominum qui* &c.] Halm compares "hi homines qui nunc sunt" (De Leg. iii. 13). In the Ep. ad Q. Fr. i. 1. 15, he has "judiciis qui nunc sunt hominum."

in summo imperatore] Dion Cassius, 36, c. 10, has something to the same effect in a speech of Gabinius. Dion was a collector of common-places. Cicero requires a commander to have knowledge of war, courage, reputation or opinion in his favour, (for that is 'auctoritas,') and good fortune. If a commander knows his art well, he has nearly all that we can ask for; but he who has been successful has a great advantage over him who has not been successful.

e ludo] The career of Cn. Pompeius Magnus is remarkable. Some modern writers have attempted to disparage the man's talents; but they were great. The time of his brilliant career was his youth and his manhood. As he grew older he lost his vigour and firmness. His rival Caesar did not distinguish himself so much as a young man, either from want of opportunity or some other cause; but Caesar retained his vigour and his firmness till his death. It is the last part of Caesar's life, after he was forty years of age, which is the brilliant part.

Plutarch has written a life of Pompeius, which, though it is loose enough in some of the historical facts, gives a picture of the man which is like a true portrait. When Pompeius was a youth of seventeen, he served under his father, Cn. Pompeius Strabo, in the Social War ('in exercitu fuit,' &c.) Strabo took Asculum B.C. 89, in his consulship. Cn. Pompeius was also in his father's army (B.C. 87) when it was summoned to Rome to defend the city against the threatened attack of Cinna; and on this occasion, by his presence of mind, he saved his own and his father's life in a mutiny of the soldiers (Plut. Pomp. c. 3). When Sulla was returning to Italy from the East (B.C. 83), Pompeius, who was then three-and-twenty years of age, got together at his own cost, and without any authority from the state, the remnant of his father's troops, and joined Sulla, who received him well, and saluted him by the title of Imperator ('maximi ipse exercitus imperator'). Pompeius had a triumph, when he was still an Eques for his African victories over Hiarbas, King of Numidia (B.C. 81); and he triumphed again as an Eques (B.C. 71) for his victories in Spain against the Spaniards under Sertorius ('triumphis est erudita'). In B.C. 70 he was consul for the first time with M. Licinius Crassus.

sed suis imperiis, non offensionibus belli sed victoriis, non stipendiis sed triumphis est erudita. Quod denique genus esse belli potest in quo illum non exercuerit fortuna rei publicae? Civile, Africanum, Transalpinum, Hispaniense, mixtum ex civitatibus atque ex bellicosissimis nationibus, servile, navale bellum, varia et diversa genera et bellorum et hostium, non solum gesta ab hoc uno sed etiam confecta, nullam rem esse declarant in usu positam militari quae hujus viri scientiam fugere possit.

XI. Jam vero virtuti Cn. Pompeii quae potest oratio par inveniri? Quid est quod quisquam aut illo dignum, aut vobis novum aut cuiquam inauditum possit afferre? Neque enim illae sunt solae virtutes imperatoriae, quae vulgo existimantur, labor in negotiis, fortitudo in periculis, industria in agendo, celeritas in conficiendo, consilium in providendo; quae tanta sunt in hoc uno, quanta in omnibus reliquis imperatoribus quos aut vidimus aut audivimus non fuerunt. Testis est Italia, quam ille ipse victor, L. Sulla, hujus virtute et subsidio confessus est liberatam. Testis est Sicilia,

Civile, &c.] Cicero alludes to the war against Cinna and Carbo; to the war against Hiarbas (Africanum); to the passage of Pompeius over the Alps and through Gallia (Transalpinum) into Spain, where, as Cicero says in the next chapter, "legionibus nostris in Hispaniam iter Gallorum internecione patefactum est." Compare Pro Fonteio, c. 6. The words 'mixtum ex civitatibus,' &c., have caused the critics great trouble. It was a mixed war, this Spanish war, as Tacitus (Hist. iv. 22) says of another like was: "mixta belli civilis externique facie." It was a war with 'cives,' for Sertorius was a Roman, and he had Romans in his army; and it was also a war with the fierce nations of Spain. It was therefore 'mixtum;' and there is no reason to doubt that this word is genuine. The difficulty lies in 'ex civitatibus,' in which there appears to be some mistake. The 'servile bellum' is the war against Spartacus. When Pompeius was in North Italy on his return from Spain, he met five thousand of the slaves who had escaped from the slaughter near the river Silarus, where the army of Spartacus had been defeated by M. Crassus. Pompeius destroyed the fugitives, and in his despatch to the Senate he boasted that he had cut up the war by the roots (Plutarch, Pomp. c. 21, Crassus, c. 11). Pompeius was not very modest, and he was greedy of fame. The 'navale bellum' is the war with the pirates.

11. *Neque enim illae* &c.] He says in the beginning of the chapter: "But what words can be found sufficient to express the merit ('virtus') of Cn. Pompeius?" Then he says: "for those are not the only merits in a commander which are generally supposed to be, such as labour in the transaction of business," &c. Halm observes that Cicero means to say that there are other merits; and the words 'sed etiam aliae,' which ought to have followed, are omitted, because the orator digresses in praise of the ordinary qualities of a commander ('Testis est Italia,' &c.) In order to understand this passage we must refer to c. 13 ("Quid ceterae, quas paullo ante commemorare coeperam," &c.). Halm refers to a passage in Xenophon (Mem. iii. 1. 6), in which Socrates mentions a great number of qualities that a general should have, besides the mere knowledge of tactic.

Testis est Sicilia,] Pompeius was sent into Sicily (B.C. 82) against Cn. Papirius Carbo, who was caught, brought before Pompeius in chains, and put to death after being insulted. Pompeius sent Carbo's head to Sulla (Plut. Pomp. c. 10; Appian, B. C. i. 96).—'explicavit:' this is Cicero's form, not 'explicuit.' See Vol. I. Verr. ii. 2. c. 1. note. Halm compares Cicero, Verr. ii. 5. c. 58: "Si—ex his te laqueis exueris ac te aliqua via ac ratione explicaris," &c.

quam multis undique cinctam periculis, non terrore belli sed consilii celeritate explicavit. Testis est Africa, quae magnis oppressa hostium copiis, eorum ipsorum sanguine redundavit. Testis est Gallia, per quam legionibus nostris iter in Hispaniam Gallorum internicione patefactum est. Testis est Hispania, quae saepissime plurimos hostes ab hoc superatos prostratosque conspexit. Testis est iterum et saepius Italia, quae quum servili bello taetro periculosoque premeretur, ab hoc auxilium absente expetivit; quod bellum exspectatione ejus attenuatum atque imminutum est, adventu sublatum ac sepultum. Testes nunc vero jam omnes orae atque omnes exterae gentes ac nationes, denique maria omnia, quum universa, tum in singulis oris omnes sinus atque portus. Quis enim toto mari locus per hos annos aut tam firmum habuit praesidium ut tutus esset, aut tam fuit abditus ut lateret? Quis navigavit qui non se aut mortis aut servitutis periculo committeret, quum aut hieme aut referto praedonum mari navigaret? Hoc tantum bellum, tam turpe, tam vetus, tam late divisum atque dispersum, quis umquam arbitraretur aut ab omnibus imperatoribus uno anno aut omnibus annis ab uno imperatore confici posse? Quam provinciam tenuistis a praedonibus liberam per hosce annos? quod vectigal vobis tutum fuit? quem socium defendistis? cui praesidio classibus vestris fuistis? quam multas existimatis insulas esse desertas? quam multas aut metu relictas aut a praedonibus captas urbes esse sociorum? XII. Sed quid ego longinqua commemoro? Fuit hoc quondam, fuit proprium populi Romani, longe a domo bellare et propugnaculis imperii sociorum fortunas, non sua tecta defendere. Sociis ego nostris mare per hos annos clausum dicam fuisse, quum exercitus vestri numquam a Brundisio nisi hieme summa transmiserint? Qui ad vos ab exteris nationibus venirent captos querar, quum legati populi Romani redempti sint? Mercatoribus tutum mare non fuisse dicam, quum duodecim secures in praedonum po-

internicione] 'Internicione' is considered to be the true form, like 'pernicies.' Halm refers to the notes in Schneider's edition of the Gallic war (B. G. i. 13; ii. 28).

tam vetus,] This piratical war commenced, as Halm remarks, twenty years before, in the consulship of Cn. Octavius and L. Cinna; and he adds that Drumann (Geschichte Roms, iv. 393) has carefully written the history of it.

12. *a Brundisio*] The usual passage to the East by sea was from Brundisium, and the pirates infested even the seas in those parts (Appian, Mithrid. c. 93). Navigation was not safe from the pirates in the winter (Dion Cassius, 36. c. 4). Both the forms Brundusium and Brundisium occur in the MSS. Brundisium occurs on inscriptions.

duodecim secures] Plutarch (Pomp. c. 24) speaks of two praetors being taken by the pirates, together with their lictors. A praetor out of the city was preceded by six lictors; and in the city by two lictors, after the Lex Plaetoria. The words of this Plebiscitum are quoted by Censorinus, De die Natal. 24: "Praetor urbanus, qui

testatem pervenerint? Cnidum aut Colophonem aut Samum, nobilissimas urbes innumerabilesque alias captas esse commemorem, quum vestros portus, atque eos portus, quibus vitam ac spiritum ducitis, in praedonum fuisse potestatem sciatis? An vero ignoratis portum Caietae celeberrimum ac plenissimum navium, inspectante praetore, a praedonibus esse direptum? ex Miseno autem ejus ipsius liberos, qui cum praedonibus antea ibi bellum gesserat, a praedonibus esse sublatos? Nam quid ego Ostiense incommodum atque illam labem atque ignominiam rei publicae querar, quum prope inspectantibus vobis classis ea, cui consul populi Romani praepositus esset, a praedonibus capta atque oppressa est? Pro dii immortales! tantamne unius hominis incredibilis ac divina virtus tam brevi tempore lucem afferre rei publicae potuit, ut vos, qui modo ante ostium Tiberinum classem hostium videbatis, nunc nullam intra Oceani ostium praedonum navem esse audiatis? Atque haec qua celeritate gesta sint quamquam videtis, tamen a me in dicendo praetereunda non sunt. Quis enim umquam aut obeundi negotii aut consequendi quaestus studio tam brevi tempore tot loca adire, tantos cursus conficere potuit, quam celeriter Cn. Pompeio duce tanti belli impetus navigavit? qui nondum tempestivo ad na-

nunc est, quique posthac fuat, duo lictores apud se habeto" (Becker, Handbuch, ii. 2. p. 188). The Greek name of a praetor is ἑξαπέλεκυς ἡγεμών (Polybius). Klotz remarks that when a 'magistratus' is spoken of as being in Rome the word 'fasces' only is used, and not 'secures,' because no 'magistratus' was allowed to carry the 'secures' in the 'fasces' within the city. He refers to Dionysius, Antiq. Rom. v. 19; and to the passage in Livy, 24. c. 9: "lictores ad eum accedere consul jussit," &c.

Cnidum aut Colophonem &c.] See Plutarch, Pomp. c. 24.—'vestros portus:' Caieta, Misenum, Ostia, as Hotmann says, through which came the foreign supplies of corn from Sicily and other places.

in—potestatem] See Vol. I. Verr. ii. 2. c. 27. Some of the editors retain 'in—potestate,' but we cannot doubt from the passage of Gellius (i. 7) that 'potestatem' was the reading in some MS. or MSS. of his time. V. has 'potestate fuisse.'

ejus ipsius liberos,] Plutarch (Pomp. c. 24) mentions a daughter of Antonius being carried off by the pirates. This Antonius, he adds, had enjoyed a triumph. It is generally supposed that M. Antonius, the orator, is the person whose daughter was carried off. When Cicero says 'liberos,' this does not prove that more than one child is spoken of. See Vol. I. Verr. Act. Pr. c. 5.

Ostiense incommodum] Dion (36. c. 5) says that the pirates attacked the cities of Italy which were on the coast, and even burnt the ships at Ostia, the port of Rome at the mouth of the Tiber, and plundered the place. Cicero does not mention the name of the consul, who was set over the fleet, nor is it known.

videbatis, nunc] There is a reading 'videbatis, ii nunc,' which Halm and Baiter have. Halm compares 'Nos—ii' in c. 18.

Oceani ostium] The Fretum Gaditanum, or Straits of Gibraltar. It does not appear that the name occurs elsewhere, and, as Halm remarks, the orator used it to make an antithesis to 'ostium Tiberinum.'

impetus navigavit?] A passage of Florus (ii. 2) is compared with this: "Regulo duce jam in Africam navigavit bellum." And Halm compares Cicero, Verr. ii. 4. c 58: "quum tam multa ex illo mari bella emerserint."

qui nondum &c.] Garatoni has a note on this, which it seems best to give in his own words: "Quomodo vulgata defendi possint, non video. Bellum Pompeius *extrema hieme apparavit, ineunte vere suscepit*, ut

vigandum mari Siciliam adiit, Africam exploravit, inde Sardiniam cum classe venit, atque haec tria frumentaria subsidia rei publicae firmissimis praesidiis classibusque munivit. Inde quum se in Italiam recepisset, duabus Hispaniis et Gallia Transalpina praesidiis ac navibus confirmata, missis item in oram Illyrici maris et in Achaiam omnemque Graeciam navibus Italiae duo maria maximis classibus firmissimisque praesidiis adornavit; ipse autem ut Brundisio profectus est, undequinquagesimo die totam ad imperium populi Romani Ciliciam adjunxit: omnes qui ubique praedones fuerunt, partim capti interfectique sunt, partim unius hujus se imperio ac

ait infra Tullius. Mari ad Siciliam, Africam et Sardiniam perlustrato diebus omnino XL. (App. Mithr. 95. Plut. Pomp. 26) Romam revertit, ibique paucos dies commoratus Brundusium venit atque inde in Ciliciam celerrime transmisit. Ergo etiamsi *extrema hieme* Siciliam adierit, satis tempestive deinde navigavit. Sed verius est *ineunte vere*, mari nondum tuto, eum navigare coepisse eoque referendum videtur ejus apud Plut. ἀπόφθεγμα ed. Lond. p. 86." The text of Cicero is as plain as this note.

duabus Hispaniis] See Pro Fonteio, c. 7.—'Gallia Transalpina:' the reading of the Erf. and of some other MSS.; but most of the MSS. have Gallia Cisalpina. I think that Transalpina is the true reading. Garatoni conjectures that Gallia alone, without any addition, is the true reading, or that we should read 'Galliis confirmatis.' 'Confirmatis' is the reading of one MS. (Colon.)

omnemque Graeciam] Some commentators have supposed that this expression includes the Greeks on the coast of Asia Minor, which is manifestly a false interpretation, particularly if Gallia Transalpina is the true reading. For, on the one side, Pompeius protects the Hispaniae and Transalpina Gallia (the Provincia), on the other, the coast of the Illyric sea, Achaea, and all Greece, that is, all the country on the east side of the Hadriatic; and thus two seas were protected. Nor does it appear that Pompeius sent any ships into the eastern part of the Mediterranean before he sailed from Brundisium. This is Halm's remark; and he is right. He adds that Cicero said 'omnemque Graeciam,' because at that time all Greece was not a Roman Province, though it has been generally affirmed by modern writers that it was reduced to the form of a Provincia B.C. 146; an error which C. F. Hermann, Antiq. Graec. i. § 190, 3. p. 437. ed. iii. was the first to correct. It is said that the first governor of Achaea who is mentioned was the learned Ser. Sulpicius (Cic. Ad Fam. vi. 6); and if this is true, it is probable that the province of Achaea was constituted by the Dictator Caesar.

undequinquagesimo] Liv. Epit. 99: "intra quadragesimum diem toto mari eos (piratas) expulit, belloque cum iis in Cilicia confecto, acceptis in deditionem piratis agros et urbes dedit." This is loose enough. It appears from Plutarch (Pomp. c. 26) and Zonaras (x. 3) that Pompeius "cleared of the piratical vessels the Tyrrhenian sea, the Libyan, and the seas around Sardinia and Corsica, and Sicily in forty days in all, by his own unwearied exertions and the active co-operation of his commanders." Pompeius then went to Rome, and from Rome to Brundisium, whence he set out for the Cilician war, which was soon finished. (Plut. Pomp. c. 27, &c.) Klotz has a note on this passage, in which he observes, among other things, that one might conclude from the short time in which the war with the pirates was finished, that it was not so dangerous a war as Cicero would make us believe. Pompeius also had at his command the whole resources of the Roman state, and the pirates yielded as much through fear of his power as by force of arms. His interference in the affairs of Crete, while he was in the East, and while Q. Metellus was in command in the island, was altogether unjustifiable, and brought h m into discredit (Plutarch, Pomp. c. 29). But after all, he did put down the pirates: he did the work well which he took in hand; and it is a proof of his wisdom that he got at his disposal a force which made all resistance impossible.

partim] See c. 7.—'media aestate:' Plutarch (Pomp. c. 28) reckons the whole time not more than three months. Gara-

potestati dediderunt. Idem Cretensibus, quum ad eum usque in Pamphyliam legatos deprecatoresque misissent, spem deditionis non ademit obsidesque imperavit. Ita tantum bellum, tam diuturnum, tam longe lateque dispersum, quo bello omnes gentes ac nationes premebantur, Cn. Pompeius extrema hieme apparavit, ineunte vere suscepit, media aestate confecit. XIII. Est haec divina atque incredibilis virtus imperatoris. Quid ceterae, quas paullo ante commemorare coeperam, quantae atque quam multae sunt. Non enim bellandi virtus solum in summo atque perfecto imperatore quaerenda est, sed multae sunt artes eximiae hujus administrae comitesque virtutis. Ac primum quanta innocentia debent esse imperatores! quanta deinde in omnibus rebus temperantia! quanta fide! quanta facilitate! quanto ingenio! quanta humanitate! Quae breviter qualia sint in Cn. Pompeio consideremus; summa enim omnia sunt, Quirites: sed ea magis ex aliorum contentione quam ipsa per sese cognosci atque intelligi possunt. Quem enim imperatorem possumus ullo in numero putare, cujus in exercitu centuriatus veneant atque venierint? Quid hunc hominem magnum aut amplum de re publica cogitare, qui pecuniam ex aerario depromptam ad bellum administrandum, aut propter cupiditatem provinciae magistratibus diviserit aut propter avaritiam Romae in quaestu reliquerit? Vestra admurmuratio facit, Quirites, ut agnoscere videamini qui haec fecerint: ego autem nomino neminem: quare irasci mihi nemo poterit, nisi qui ante de se voluerit confiteri. Itaque propter hanc avaritiam imperatorum, quantas calamitates,

toni remarks that if we add to Plutarch's forty days for the first part of the war, Cicero's forty-nine days for the other part, we have in all the three months which Plutarch mentions. Garatoni also remarks that Plutarch, agreeing with Cicero, correctly makes some interval between the two expeditions of Pompeius, and that he seems to reckon the three months from the putting to sea of the ships to the battle at Coracesium. (Introd.)

13. *quas paullo ante* &c.] See c. 11, 'neque enim illae sunt, &c.,' and the note. Seyfferth translates 'coeperam' 'which I intended to mention.'

ullo in numero] This seems to mean 'at all among the class of commanders,' 'consider him in any way as a commander.' There is a reading 'aliquo in numero,' to which some critics would give a somewhat different meaning. As to the use of 'numerus,' see Vol. I. Verr. ii. 2. c. 54.

centuriatus] Cicero speaks of centurionships being sold, a command in an army being bought by money, as a scandalous thing. It was a scandalous thing for a general to sell what he ought to give. It has been a matter of doubt what general Cicero means. Some say Lucullus; others say it is not Lucullus, but Glabrio. I don't suppose that he means any particular person. He may mean several, for he says 'qui haec fecerint.'

aerario] An allowance of money was made from the treasury to the governor of provinces; and it was said to be 'attributa' (In Pisonem, c. 35; Verr. ii. 1. c. 13. Cicero represents this money as sometimes misapplied to bribe the magistrates at Rome, the consuls, tribuni, and others, in order that the briber might keep his province ('propter cupiditatem provinciae'); or that it was left in Rome in the hands of the bankers (In Pison. c. 35), in order to be employed at interest.

quocumque ventum sit, nostri exercitus ferant quis ignorat? Itinera quae per hosce annos in Italia per agros atque oppida civium Romanorum nostri imperatores fecerint recordamini: tum facilius statuetis quid apud exteras nationes fieri existimetis. Utrum plures arbitramini per hosce annos militum vestrorum armis hostium urbes an hibernis sociorum civitates esse deletas? Neque enim potest exercitum is continere imperator, qui se ipse non continet; neque severus esse in judicando, qui alios in se severos esse judices non vult. Hic miramur hunc hominem tantum excellere ceteris, cujus legiones sic in Asiam pervenerint ut non modo manus tanti exercitus, sed ne vestigium quidem cuiquam pacato nocuisse dicatur? Jam vero quemadmodum milites hibernent, quotidie sermones ac litterae perferuntur. Non modo ut sumptum faciat in militem nemini vis affertur, sed ne cupienti quidem cuiquam permittitur. Hiemis enim non avaritiae perfugium majores nostri in sociorum atque amicorum tectis esse voluerunt. XIV. Age vero, ceteris in rebus qua sit temperantia considerate. Unde illam tantam celeritatem et tam incredibilem cursum inventum putatis? Non enim illum eximia vis remigum, aut ars inaudita quaedam gubernandi, aut venti aliqui novi tam celeriter in ultimas terras pertulerunt, sed hae res, quae ceteros remorari solent, non retardarunt: non avaritia ab instituto cursu ad praedam aliquam devocavit, non libido ad voluptatem, non amoenitas ad delectationem, non nobilitas Urbis ad cognitionem, non denique labor ipse ad quietem: postremo signa et tabulas ceteraque ornamenta Graecorum oppidorum, quae ceteri tollenda esse arbitrantur, ea sibi ille

Itinera] Cicero (Ad Q. Fr. i. 1. c. 2): "non itineribus tuis perterreri homines, non sumptu exhauriri, non adventu commoveri," &c. And again (c. 6): "sed hoc et brevissimum est et facillime teneri potest, ut ita se gerant in istis Asiaticis itineribus ut si iter Appia via faceres, neve interesse quidquam putent utrum Tralles an Formias venerint."

Hiemis—perfugium] 'Hiemis perfugium' is compared with the expression Pro Caecina, c. 34: 'perfugium portusque supplicii;' but 'avaritiae perfugium' must be a place to which avarice resorts to satisfy itself.

14. *qua sit temperantia*] There are readings 'qualis,' 'quali,' and 'quae.'

nobilitas Urbis] After leaving Brundisium, Plutarch (Pomp. c. 27) says of Pompeius: "But though he was pressed by the urgency of the business, and sailed past the cities in his haste, still he did not pass by Athens, but he went up to it. After sacrifices to the gods, and addressing the people, just as he was quitting the place he read two inscriptions, each of a single verse, addressed to him; the one within the gate:—

"As thou own'st thyself a mortal, so
thou art in truth a god;"

and that on the outside:

"Expected, welcomed, seen, we now
conduct thee forth."

signa et tabulas] Cicero says to his brother Quintus, when he was governor of Asia (Ad Q. Fr. i. 1. c. 2): "Praeclarum est enim summo cum imperio fuisse in Asia triennium sic ut nullum te signum, nulla pictura . . . ab summa integritate continentiaque deduxerit."

ne visenda quidem existimavit. Itaque omnes nunc in iis locis Cn. Pompeium sicut aliquem, non ex hac urbe missum, sed de caelo delapsum intuentur: nunc denique incipiunt credere fuisse homines Romanos hac quondam continentia; quod jam nationibus exteris incredibile ac falso memoriae proditum videbatur. Nunc imperii vestri splendor illis gentibus lucem afferre coepit: nunc intelligunt non sine caussa majores suos, tum quum ea temperantia magistratus habebamus, servire populo Romano quam imperare aliis maluisse. Jam vero ita faciles aditus ad eum privatorum, ita liberae querimoniae de aliorum injuriis esse dicuntur, ut is qui dignitate principibus excellit facilitate infimis par esse videatur. Jam quantum consilio, quantum dicendi gravitate et copia valeat, in quo ipso inest quaedam dignitas imperatoria, vos, Quirites, hoc ipso ex loco saepe cognovistis. Fidem vero ejus quantam inter socios existimari putatis, quam hostes omnes omnium generum sanctissimam judicarint? Humanitate jam tanta est ut difficile dictu sit, utrum hostes magis virtutem ejus pugnantes timuerint an mansuetudinem victi dilexerint. Et quisquam dubitabit quin huic hoc tantum bellum transmittendum sit, qui ad omnia nostrae memoriae bella conficienda divino quodam consilio natus esse videatur?

XV. Et quoniam auctoritas quoque in bellis administrandis multum atque imperio militari valet, certe nemini dubium est quin ea re idem ille imperator plurimum possit. Vehementer autem pertinere ad bella administranda, quid hostes, quid socii de imperatoribus nostris existiment, quis ignorat, quum sciamus homines in tantis rebus ut aut contemnant aut metuant aut oderint aut ament opinione non minus et famà quam aliqua ratione certa commoveri? Quod igitur nomen umquam in orbe terrarum clarius fuit, cujus res gestae pares, de quo homine vos, id quod maxime facit auctoritatem, tanta et tam praeclara judicia fecistis? An vero

iis locis] A correction by Madvig and Benecke of the common reading, 'his locis.'

de caelo] Ad Q. Fr. i. 1. c. 2: "Nam Graeci quidem sic te ita viventem intuebuntur ut quendam ex annalium memoria aut etiam de caelo divinum hominem esse in provinciam delapsum putent."

lucem afferre coepit:] The other reading is 'lucem affert.'

dicendi gravitate] Cicero says of the oratory of Pompeius (Brutus, c. 68): "Cn. Pompeius, vir ad omnia summa natus, majorem dicendi gloriam habuisset, nisi eum majoris gloriae cupiditas ad bellicas laudes abstraxisset. Erat oratione satis amplus, rem prudenter videbat; actio vero ejus habebat et in voce magnum splendorem et in motu summam dignitatem."

omnium generum] Perhaps the better reading. The other is 'omnium gentium.'—'Humanitate jam tanta est:' Benecke would erase the 'jam,' being inclined to think that it is never placed, in this sense at least, except at the beginning of a sentence. I don't know what sense he gives to it. 'Jam' marks an emphasis on 'humanitate,' as it does (c. 18) in the expression 'Appia jam via.'

ullam usquam esse oram tam desertam putatis, quo non illius diei fama pervaserit, quum universus populus Romanus, referto foro completisque omnibus templis, ex quibus hic locus conspici potest, unum sibi ad commune omnium gentium bellum Cn. Pompeium imperatorem depoposcit? Itaque, ut plura non dicam neque aliorum exemplis confirmem, quantum [hujus] auctoritas valeat in bello, ab eodem Cn. Pompeio omnium rerum egregiarum exempla sumantur; qui quo die a vobis maritimo bello praepositus est imperator, tanta repente vilitas annonae ex summa inopia et caritate rei frumentariae consecuta est, unius hominis spe ac nomine, quantam vix ex summa ubertate agrorum diuturna pax efficere potuisset. Jam accepta in Ponto calamitate ex eo praelio, de quo vos paullo ante invitus admonui, quum socii pertimuissent, hostium opes animique crevissent, satis firmum praesidium provincia non haberet, amisissetis Asiam, Quirites, nisi ad ipsum discrimen ejus temporis divinitus Cn. Pompeium ad eas regiones fortuna populi Romani attulisset. Hujus adventus et Mithridatem insolita inflammatum victoria continuit, et Tigranem magnis copiis minitantem Asiae retardavit. Et quisquam dubitabit quid virtute perfecturus sit qui tantum auctoritate perfecerit, aut quam facile imperio atque exercitu socios et vectigalia conservaturus sit qui ipso nomine ac rumore defenderit? XVI. Age vero, illa res quantam declarat ejusdem hominis apud hostes populi Romani auctoritatem, quod ex locis tam longinquis tamque diversis tam brevi tempore omnes huic se uni dediderunt? quod Cretensium legati, quum in eorum insula noster imperator exercitusque esset, ad Cn. Pompeium in ultimas prope terras venerunt, eique se omnes Cretensium civitates dedere

15. *illius diei*] On which day A. Gabinius proposed the Lex for giving Pompeius the command in the war against the pirates.

quantum [*hujus*] *auctoritas*] 'Hujus,' the MSS. reading, seems to spoil the sense, for the orator intends to says that, without taking other instances, he will prove, by the example of Pompeius, the value of 'auctoritas' or opinion. Yet a word is wanted between 'quantum' and 'auctoritas,' and Halm conjectures that 'hujus' ought to be 'ducis.'

vilitas annonae] See Vol. I. Verr. ii. 3. c. 64 note on 'annona.' The price of grain fell because it was expected that the sea would be open soon. There must then have been a stock in the hands of the dealers.

calamitate ex eo praelio,] See c. 9.— 'divinitus:' Pompeius had not been sent against Mithridates, but he was in Asia prosecuting the war against the pirates (c. 5): "tametsi ille ad maritimum bellum venerit."

16. *Cretensium legati,*] Drumann says (Geschichte Roms, iv. p. 426): "It was not the reputation of Pompeius which determined the Cretans, but his mildness towards the pirates and the cruelty of Metellus Creticus; accordingly this should have been mentioned before, when Cicero is speaking of the 'humanitas' of Pompeius." But Cicero thought it better to say here what he has said.

in ultimas prope terras] Into Pamphylia (c. 5), which was no great distance. It has been suggested that Cicero was not very careful before a popular audience about exaggerating a little in such a matter as this.

velle dixerunt? Quid idem iste Mithridates, nonne ad eundem Cn. Pompeium legatum usque in Hispaniam misit? eum quem Pompeius legatum semper judicavit, ii, quibus erat semper molestum ad eum potissimum esse missum, speculatorem quam legatum judicari maluerunt. Potestis igitur jam constituere, Quirites, hanc auctoritatem multis postea rebus gestis magnisque vestris judiciis amplificatam, quantum apud illos reges, quantum apud exteras nationes valituram esse existimetis.

Reliquum est ut de felicitate, quam praestare de se ipso nemo potest, meminisse et commemorare de altero possumus, sicut aequum est homines de potestate deorum, timide et pauca dicamus. Ego enim sic existimo: Maximo, Marcello, Scipioni, Mario, et ceteris magnis imperatoribus, non solum propter virtutem sed etiam propter fortunam saepius imperia mandata atque exercitus esse commissos. Fuit enim profecto quibusdam summis viris quaedam ad amplitudinem et ad gloriam et ad res magnas bene gerendas divinitus adjuncta fortuna: de hujus autem hominis felicitate, de quo nunc agimus, hac utar moderatione dicendi, non ut in illius potestate fortunam positam esse dicam, sed ut praeterita meminisse, reliqua sperare videamur, ne aut invisa diis immortalibus oratio nostra aut ingrata esse videatur. Itaque non sum praedicaturus quantas ille res domi militiae, terra marique, quantaque felicitate gesserit; ut ejus semper voluntatibus non modo cives assenserint, socii obtemperarint, hostes obedierint, sed etiam venti tempestatesque obsecundarint. Hoc brevissime dicam, neminem umquam tam impudentem fuisse qui ab diis immortalibus tot et tantas res tacitus auderet optare, quot et quantas dii immortales ad Cn. Pompeium detulerunt. Quod ut illi proprium ac perpetuum

legatum] Drumann observes (Geschichte Roms, iv. p. 416): "Not to Metellus Pius, the other commander in the war against Sertorius, whose reputation consequently was less. In order to gain the favour of the people and their favourite, Cicero is never tired of attacking the first men in Rome, a conduct which bore him bitter fruit. The fact itself, however, is an invention, or it is perverted. According to all other accounts Mithridates negotiated with Sertorius, not with Pompeius. We may at most admit that Pompeius caught a spy of the king in his camp, and out of vanity made the pretence of believing that the man had a commission to him." This is a curious way of writing history; but it is the way now.

Maximo &c.] He is speaking of Q. Fabius Maximus Cunctator, who checked Annibal by his prudence; M. Claudius Marcellus, who first showed that Annibal was not invincible, and P. Cornelius Scipio, the son of Paulus, probably, and not the other Scipio (Manutius). Marius is C. Marius, the conqueror of the Cimbri and the Teutones, who came from Arpinum, Cicero's native place.

detulerunt.] The reading of the better MSS. There is a reading 'contulerunt,' which with 'ad' after it is not the proper form 'Deferre' is used just the same way in the next chapter: "sed ad unum tamen omnia deferre non oportere."—'velle et optare:' see Vol. I. Divin. c. 7. note.

sit, Quirites, quum communis salutis atque imperii, tum ipsius hominis caussa, sicuti facitis, velle et optare debetis.

Quare quum et bellum sit ita necessarium ut negligi non possit, ita magnum ut accuratissime sit administrandum, et quum ei imperatorem praeficere possitis, in quo sit eximia belli scientia, singularis virtus, clarissima auctoritas, egregia fortuna, dubitatis, Quirites, quin hoc tantum boni, quod vobis ab diis immortalibus oblatum et datum est, in rem publicam conservandam atque amplificandam conferatis? XVII. Quod si Romae Cn. Pompeius privatus esset hoc tempore, tamen ad tantum bellum is erat deligendus atque mittendus. Nunc, quum ad ceteras summas utilitates haec quoque opportunitas adjungatur, ut in iis ipsis locis adsit, ut habeat exercitum, ut ab iis qui habent accipere statim possit, quid exspectamus, aut cur non ducibus diis immortalibus eidem cui cetera summa cum salute rei publicae commissa sunt hoc quoque bellum regium committamus?

At enim vir clarissimus, amantissimus rei publicae, vestris beneficiis amplissimis affectus, Q. Catulus, itemque summis ornamentis honoris, fortunae, virtutis, ingenii praeditus, Q. Hortensius, ab hac ratione dissentiunt: quorum ego auctoritatem apud vos multis locis plurimum valuisse et valere oportere confiteor, sed in hac caussa, tametsi cognoscitis auctoritates contrarias virorum fortissimorum et clarissimorum, tamen omissis auctoritatibus ipsa re ac ratione exquirere possumus veritatem; atque hoc facilius quod ea omnia, quae a me adhuc dicta sunt, iidem isti vera esse concedunt, et necessarium bellum esse et magnum et in uno Cn. Pompeio summa esse omnia. Quid igitur ait Hortensius? Si uni omnia tribuenda sint, dignissimum esse Pompeium, sed ad unum tamen omnia deferri non oportere. Obsolevit jam ista oratio, re multo magis quam

17. *Quod si—esset—tamen—is erat*] "Now if Cn. Pompeius had been at Rome in a private capacity, still he ought to be selected and sent to conduct so important a war." On the subjunctive and indicative see Vol. I. Verr. ii. 5. c. 49. Cicero says (Ad Att. iii. 22): "Ego quod per Thessaliam si irem in Epirum, perdiu nihil eram auditurus."

ut in iis ipsis locis] See Introd.

committamus?] The other reading is 'committimus.' Benecke says that 'cur non—committimus' expresses with indignation and vexation the fact that the war is not intrusted to Pompeius, and that 'cur non—committamus' means, that the speaker urges that to be done which is not yet done. He compares the letter of Plancus to Cicero (Ad Div. x. 23): "pro urbis vero salute cur non omnibus facultatibus quas habemus utamur?"

At enim &c.] This is a supposed objection, which Cicero is going to answer. See Vol. I. Act. 1. c. 5. Q. Catulus was consul B.C. 78, with M. Aemilius Lepidus as his colleague. See the Introd.—'tametsi cognoscitis,' &c.: "though you know that there are opposite opinions to those of Catulus and Hortensius, and opinions of most resolute and respected men, still, putting aside the weight of opinions, we can search out the truth from the facts themselves and the reason of the case."—'cognoscitis:' 'cognoscetis,' Baiter.

ista oratio,] The reading 'ratio' in Priscian, p. 872, is properly rejected by Halm.

verbis refutata. Nam tu idem, Q. Hortensi, multa pro tua summa copia ac singulari facultate dicendi, et in senatu contra virum fortem A. Gabinium graviter ornateque dixisti, quum is de uno imperatore contra praedones constituendo legem promulgasset, et ex hoc ipso loco permulta item contra eam legem verba fecisti. Quid tum, per deos immortales, si plus apud populum Romanum auctoritas tua quam ipsius populi Romani salus et vera caussa valuisset, hodie hanc gloriam atque hoc orbis terrae imperium teneremus? An tibi tum imperium hoc esse videbatur, quum populi Romani legati, praetores quaestoresque capiebantur, quum ex omnibus provinciis commeatu et privato et publico prohibebamur, quum ita clausa nobis erant maria omnia ut neque privatam rem transmarinam neque publicam jam obire possemus? XVIII. Quae civitas antea umquam fuit, non dico Atheniensium, quae satis late quondam mare tenuisse dicitur, non Karthaginiensium, qui permultum classe ac maritimis rebus valuerunt, non Rhodiorum, quorum usque ad nostram memoriam disciplina navalis et gloria remansit; quae civitas umquam antea tam tenuis, quae tam parva insula fuit, quae non portus suos et agros et aliquam partem regionis atque orae maritimae per se ipsa defenderet? At hercule aliquot annos continuos ante legem Gabiniam ille populus Romanus, cujus usque ad nostram memoriam nomen invictum in navalibus pugnis permanserat, magna ac multo maxima parte non modo utilitatis sed dignitatis atque imperii caruit. Nos, quorum majores Antiochum regem classe

Benecke accepts 'ratio.' This word and 'oratio' are continually confounded in the MSS. He says 'obsolevit:' 'talk of that kind is become quite stale.'

A. Gabinium] See the Introd.—'promulgasset:' see Vol. I. Verr. ii. 2. c. 71.

commeatu &c.] Dion 36. c. 6, says that the imports were stopped, and the supply of corn by sea had been entirely cut off.

18. *Karthaginiensium*,] Polybius (i. 10) observes that the Carthaginians had once subjected to their dominion not only the other parts of Libya and many parts of Iberia (Spain), but were also masters of all the islands in the Sardinian and Tyrrhenian sea.

Benecke remarks that the Erf. and other MSS. have the form *Carthaginensis*, which is also found elsewhere in good MSS. of Cicero.

Rhodiorum,] The Rhodii were a maritime people, and at one time powerful by sea. (Gell. vii. 3). Strabo (p. 448) says: "the state of the Rhodii in its harbours and roads and walls, and the rest of its works, surpasses all others.—Worthy of admiration also is their good system of law, and the great attention which they pay both to other polity and to naval matters, by virtue of which Rhodus had dominion over the sea for a long time, and destroyed the haunts of the pirates." Some of the Rhodian rules of law as to maritime matters were adopted by the Romans, and are now in force among those nations who derive their civilization from the Romans. There is an instance of this in the Lex Rhodia de Jactu (Dig. 14. 2. 1): "Lege Rhodia cavetur, ut si levandae navis gratia jactus mercium factus sit, omnium contributione sarciatur quod pro omnibus datum est." See also (Dig. 14. 2. 9) the excerpt from 'Volusianus Maecianus ad legem Rhodiam.'

permanserat,] Halm has 'permanserit' from the Erf. and some other MSS., with this remark: "major inest in conjunctivo vis, quo res contemplationi audientium subjicitur." He is mistaken.

Persenque superarunt omnibusque navalibus pugnis Karthaginienses, homines in maritimis rebus exercitatissimos paratissimosque, vicerunt, ii nullo in loco jam praedonibus pares esse poteramus. Nos, qui antea non modo Italiam tutam habebamus, sed omnes socios in ultimis oris auctoritate nostri imperii salvos praestare poteramus, tum quum insula Delos, tam procul a nobis in Aegaeo mari posita, quo omnes undique cum mercibus atque oneribus commeabant, referta divitiis, parva, sine muro, nihil timebat, iidem non modo provinciis atque oris Italiae maritimis ac portubus nostris, sed etiam Appia jam via carebamus. Et his temporibus non pudebat magistratus populi Romani in hunc ipsum locum escendere, quum eum nobis majores nostri exuviis nauticis et classium spoliis ornatum reliquissent. XIX. Bono te animo tum, Q. Hortensi, populus Romanus et ceteros qui erant in eadem sententia dicere existimavit ea quae sentiebatis; sed tamen in salute communi idem

Antiochum] After Antiochus was defeated at Thermopylae by the consul M'. Acilius Glabrio, his fleet was destroyed or taken near Andros by A. Atilius, the commander of the Roman fleet (Liv. 36. c. 20). His fleet was again defeated (B.C. 191) near Corycus, on the west coast of Asia (Liv. 36. c. 42). In the following year the king's fleet was defeated for the third time at Myonnesus (Liv. 37. c. 27).

The fleet of Perses was defeated by Cn. Octavius (Liv. 45. c. 42).

Delos,] This small rocky island was a place of great trade after the fall of Corinth (B.C. 146). As it lay between Europe and Asia, and had a convenient port, it became an entrepôt, or place for the exchange of merchandise. There were no tolls or duties paid; it was a free port. The great festival of Delos was also a fair (Strabo, x. p. 486, ed. Cas.). Delos was also a great market for slaves during the season of its prosperity. The pirates brought their prisoners here, where thousands of slaves were sold in one day; the cause of which demand was, says Strabo, that the Romans, who had become rich after the conquest of Carthage and Corinth, required many slaves (Strabo, xiv. p. 668). The sanctity of Delos was connected with the legend of Latona and her two children who were born in the island. Its early history belongs to another place.

Cicero does not tell us that Delos was plundered by the generals of Mithridates before this oration was delivered (Appian, Mithrid. c. 28), at a time when it was full of merchandize, and the temple was rich. In another place also (Vol. I. Verr. ii. 1. c. 18) he has omitted to mention the plundering of Delos by Mithridates. The reason of the omission will appear, if we consider what his object on both these occasions was.

his temporibus] Halm alters or corrects 'his,' as he says, by writing 'iis,' after the Cod. Tegern. and F; and he is surprised that this alteration has not been made from conjecture long ago. I wonder that he did not see that 'iis' does not express the orator's meaning.

escendere,] This is said to be the reading only of the Cod. Col.; the rest have 'ascendere.' It is certain that both words are used, and Halm gives plenty of examples from Livy (23. c. 23; 30. c. 17; 2. c. 28), which show that the Romans said 'in rostra escendere,' 'in tribunal escendere,' and had other like expressions. 'Escendere' with 'in' and the accusative occurs in some passages of Cicero, according to the best MSS. They also said 'in urbem ascendere' and the like. Halm thinks that the Romans said 'ascendere,' when the ascent was slow, and laborious, and the ascent was viewed with reference to the place which we would reach, and not with reference to the place from which we go. So the Romans said 'in urbem, in murum, in caelum, in Capitolium ascendere.' He says that 'escendere' is generally used when the place to which the ascent is made is near and easy; so the Romans said 'in rostra, in suggestum, in tribunal escendere.'

exuviis nauticis] The Rostra in the Forum was adorned with the heads of the ships of the Antiates (Liv. viii. 14). See c. 1.

populus Romanus dolori suo maluit quam auctoritati vestrae obtemperare. Itaque una lex, unus vir, unus annus non modo nos illa miseria ac turpitudine liberavit, sed etiam effecit ut aliquando vere videremur omnibus gentibus ac nationibus terra marique imperare. Quo mihi etiam indignius videtur obtrectatum esse adhuc, Gabinio dicam anne Pompeio an utrique, id quod est verius, ne legaretur A. Gabinius Cn. Pompeio expetenti ac postulanti. Utrum ille, qui postulat ad tantum bellum legatum quem velit, idoneus non est qui impetret, quum ceteri ad expilandos socios diripiendasque provincias quos voluerunt legatos eduxerint: an ipse, cujus lege salus ac dignitas populo Romano atque omnibus gentibus constituta est, expers esse debet gloriae ejus imperatoris atque ejus exercitus, qui consilio ipsius ac periculo est constitutus? An C. Falcidius, Q. Metellus, Q. Caelius Latiniensis, Cn. Lentulus, quos omnes honoris caussa nomino, quum tribuni plebi fuissent, anno proximo

19. *ne legaretur*] Halm explains this passage thus: in conformity to previous Leges the Senate had the power of assigning a province and choosing a commander, and it was consistent that the Senate should have the nomination of the 'legati.' In course of time it became the practice for the Senate to permit 'imperatores' to choose their own 'legati;' but no 'imperator' could do it without the 'auctoritas' of the Senate. Now though Pompeius received such extensive powers by the Lex Gabinia, and also the power of choosing his own 'legati' from the body of Senators (Plut. Pomp. c. 25, 26), yet he did not choose Gabinius. But Pompeius was prevented from doing this by the Leges Licinia and Aebutia (Contra Rull. ii. c. 8), which declared that no person who had proposed a Lex about any 'curatio' or 'potestas,' should have such 'curatio' or 'potestas' committed to him. The Leges excluded even the 'cognati' and 'affines' of the mover of the Lex which gave any 'curatio' or 'potestas.' Halm adds that what is said of 'tribuni plebis' having been made 'legati' in the next year after their tribuneship is no answer to the objections made to Gabinius; for the Leges forbade the appointment of persons in an army under a commander, who had been appointed by virtue of some Lex proposed by such persons. The critics don't agree whether Gabinius was eligible to a command in the Mithridatic war. Halm affirms that he was not, because the command in this war was a continuation of that power which Pompeius had received by the Lex Gabinia. But this does not seem to be so. At least, says Halm, during the three years for which the Lex of Gabinius had given the power to Pompeius, Gabinius ought to be excluded from all command in the army of Pompeius. But this too is of no weight. If Pompeius got a new commission, Gabinius could certainly serve under him in this new commission, for it was a different commission. Halm makes another objection. Pompeius himself was not yet appointed, and yet he asked that Gabinius should be one of his 'legati;' Gabinius, says Halm, the very man who proposed the Lex under which he held his commission against the pirates. But if the conduct of the war against Mithridates was a fresh commission, a different commission, and it certainly was, this objection also is of no weight.

All we know about the matter is, that Gabinius did serve under Pompeius in the Mithridatic war for some years (Dion, 37. c. 5). Klotz has a note on the passage, which is useful so far as it shows that the Senate either named the 'legati' of an 'imperator,' or if the 'imperator' was allowed to name them, the Senate gave their formal approval. He refers to Cicero Pro P. Sextio, c. 14; In Vatinium, c. 15; in both of which passages the 'auctoritas' of the Senate is spoken of as necessary to the regular appointment of 'legati.' Other passages, which may seem to contradict these, may be explained consistently with them; as Sallust, Jug. c. 28; Cicero, Ad Div. xiii. 55; Ad Att. xv. 11; Livy, iv. 17.

honoris caussa] See Pro P. Quintio, c. 7.

legati esse potuerunt; in hoc uno Gabinio sunt tam diligentes, qui in hoc bello quod lege Gabinia geritur, in hoc imperatore atque exercitu quem per vos ipse constituit, etiam praecipuo jure esse deberet? De quo legando consules spero ad senatum relaturos. Qui si dubitabunt aut gravabuntur, ego me profiteor relaturum, neque me impediet cujusquam, [Quirites,] inimicum edictum, quo minus vobis fretus vestrum jus beneficiumque defendam neque praeter intercessionem quidquam audiam; de qua, ut arbitror, isti ipsi qui minantur etiam atque etiam quid liceat considerabunt. Mea quidem sententia, Quirites, unus A. Gabinius belli maritimi rerumque gestarum Cn. Pompeio socius ascribitur, propterea quod alter uni illud bellum suscipiendum vestris suffragiis detulit, alter delatum susceptumque confecit.

In the Pro Cluentio, c. 5, there is "mater enim a me nominis caussa," which has another meaning. But see the note there.

tam diligentes,] Halm refers 'diligentes' to the Leges mentioned in the oration Contra Rullum (ii. c. 8): "Leges sunt veteres— Licinia est lex atque altera Aebutia," &c. I think it may mean, "are people so scrupulous?"

vestrum jus beneficiumque] There is a singular variety of opinion on the meaning of these words. Halm has collected and examined them in a long note; and I think that he has come to the right conclusion. Cicero says that if the consuls will not move the Senate to appoint Gabinius, he will do it; and that he will not be prevented by the 'edictum' of any person, that is of the consuls, from maintaining 'jus vestrum beneficiumque,' which is only saying again that nothing shall prevent him from exercising the power that he has, except, he adds, the 'intercessio' of the 'tribuni pl.,' who were the popular magistrates, and he would submit to them. Now the 'beneficium' of the Roman people is the office of Praetor which they had conferred on Cicero. It follows then that 'vestrum jus' means the rights of the people, as we may say. He affirms that he will maintain the integrity of his office, and so maintain the rights of those who conferred it on him. Klotz has a good note on this passage, in which he shows, contrary to the opinion of some commentators, that a praetor could move the Senate to make a Senatus consultum; and it is clearly implied in these words that he had this power. But besides this passage, in which it might be alleged that Cicero is speaking oratorically ('oratorie,' that is, falsely), Klotz refers to Gellius xiv. 7, who is there following the authority of Varro. The passages which have been cited to prove that no 'magistratus' could move the Senate to a Consultum in the presence of the consuls are Cicero, Pro P. Sextio, c. 30; Pro Domo, c. 27; and Ad Div., x. 16; but, as Klotz says, they prove nothing. Klotz further observes, that Cicero might speak boldly about proposing A. Gabinius as a 'legatus,' for the Senate could not reject him, unless they had some reason for it, which we do not know. The Leges (Licinia and Aebutia) could not be urged against the appointment of Gabinius to a Legatio, because these 'leges' were only applicable in the case of Gabinius to his holding a commission under Cn. Pompeius in the war with the pirates; and because he had proposed the Lex which gave Pompeius the command in that war. There was no reason why he might not hold a commission under Pompeius, if Pompeius had received a new command by virtue of a new Lex, that of Manilius. Further, when Cicero speaks of C. Falcidius and others, who had been 'trib. pl.' holding a 'legatio' in the year after they had been 'tr. pl.,' we must admit that the orator shows more dexterity in his argument than regard to truth. Nobody denied that a 'tr. pl.' might hold a 'legatio' in the year after his tribunitian power; and Cicero knew that. But the Leges (Licinia and Aebutia) said nothing about 'tr. pl.' or the like. They merely provided against a man holding a commission by virtue of a Lex, when he had been the mover of the Lex. (See note, c. 19. 'ne legaretur.')

As to Beneficium see Vol. I. Verr. ii. 1. c. 5.

XX. Reliquum est ut de Q. Catuli auctoritate et sententia dicendum esse videatur. Qui quum ex vobis quaereret, si in uno Cn. Pompeio omnia poneretis, si quid eo factum esset in quo spem essetis habituri, cepit magnum suae virtutis fructum ac dignitatis, quum omnes una prope voce, "in ipso vos spem habituros esse" dixistis. Etenim talis est vir, ut nulla res tanta sit ac tam difficilis quam ille non et consilio regere et integritate tueri et virtute conficere possit. Sed in hoc ipso ab eo vehementissime dissentio, quod, quo minus certa est hominum ac minus diuturna vita, hoc magis res publica, dum per deos immortales licet, frui debet summi viri vita atque virtute.—At enim ne quid novi fiat contra exempla atque instituta majorum.—Non dicam hoc loco, majores nostros semper in pace consuetudini, in bello utilitati paruisse, semper ad novos casus temporum novorum consiliorum rationes accommodasse; non dicam duo bella maxima, Punicum atque Hispaniense, ab uno imperatore esse confecta, duasque urbes potentissimas, quae huic imperio maxime minitabantur, Karthaginem atque Numantiam, ab eodem Scipione esse deletas: non commemorabo nuper ita vobis patribusque vestris esse visum ut in uno C. Mario spes imperii poneretur, ut idem cum Jugurtha, idem cum Cimbris, idem cum Teutonis bellum administraret: in ipso Cn. Pompeio, in quo novi constitui nihil vult Q. Catulus, quam multa sint nova summa Q. Catuli voluntate constituta, recordamini. XXI. Quid tam novum quam adolescentulum privatum exercitum difficili rei publicae tempore conficere? Confecit. Huic praeesse? Praefuit. Rem optime ductu suo gerere? Gessit. Quid tam praeter consuetudinem quam homini peradolescenti, cujus aetas a senatorio gradu longe abesset,

20. *si quid eo factum esset*] 'If anything should happen to him,' that is, 'if he should die;' a euphemism, as they call it.

talis est vir.] Cicero had really a high opinion of Q. Catulus, as we see from other passages in his works (De Off. i. 22).

summi viri] The better MSS. have this; the others have 'summi hominis.'

At enim &c.] This is the supposed objection of Catulus: "Yes; but let no innovation be made contrary to the precedents and the rules of our ancestors."

Scipione] Scipio Africanus, the son of Paulus, destroyed Carthage. Livy (Epit. 51) says of his commission for the African war, "cui extra sortem provincia Africa data erat." The same epitome states that Scipio was elected consul for the first time before the legal age, and the law was for the occasion suspended ("legibus solutus et consul creatus est"). The war in Spain had been carried on unsuccessfully, when a second Consulship and the conduct of the war were given to Scipio, though it was contrary to the Lex: "quem [consulatum] quum illi capere ob legem, quae vetabat quemquam iterum consulem fieri, non liceret, sicuti priori consulatu legibus solutus est." (Liv. Epit. 56.)

21. *adolescentulum*] He was twenty-three years of age when he got together this force during Sulla's war in Italy. Some short notices have been given of the career of Pompeius in previous notes.

a senatorio gradu] Halm observes that it is doubtful at what age a man could become a senator, because it is not yet ascertained at what age he could hold a quaestor-

imperium atque exercitum dari? Siciliam permitti atque Africam, bellumque in ea provincia administrandum? Fuit in his provinciis singulari innocentia, gravitate, virtute: bellum in Africa maximum confecit, victorem exercitum deportavit. Quid vero tam inauditum quam equitem Romanum triumphare? At eam quoque rem populus Romanus non modo vidit, sed etiam omni studio visendam et concelebrandam putavit. Quid tam inusitatum quam ut, quum duo consules clarissimi fortissimique essent, eques Romanus ad bellum maximum formidolosissimumque pro consule mitteretur? Missus est. Quo quidem tempore quum esset nonnemo in senatu qui diceret, 'Non oportere mitti hominem privatum pro consule:' L. Philippus dixisse dicitur, 'Non se illum sua sententia pro consule, sed pro consulibus mittere.' Tanta in eo rei publicae bene gerendae spes constituebatur ut duorum consulum munus unius adolescentis virtuti committeretur. Quid tam singulare quam ut

ship, and so be admissible into the Senate. Some modern writers fix the age at the thirtieth year; others at the twenty-seventh.

equitem Romanum] The story is told by Plutarch (Pomp. c. 14). Pompeius' first triumph was in B.C. 80, and the second after the close of the war in Spain, in B.C. 71. Cn. Pompeius was the first Roman who had a triumph without having discharged any 'magistratus.' Becker (Handbuch, &c. ii. 2. p. 81) has a note on the triumph. Two passages in Livy help to explain the text (28. c. 38; 31. c. 20). The first is this: "ob has res gestas magis tentata est triumphi spes quam petita pertinaciter; quia neminem ad eum diem triumphasse, qui sine magistratu res gessisset, constabat."

etiam omni studio] Halm has 'omnium etiam studio,' the reading of the best MSS. as he says. I doubt if the best are the best here. Baiter follows Halm.

duo consules] The consuls of B.C. 77 were Mam. Aemilius Lepidus and D. Junius Brutus. In B.C. 76 Pompeius was sent into Spain to the war against Sertorius. Rubino (quoted by Halm) has a useful remark. He says that at this time, before the restoration of the Tribunician power, the whole administration was in the hands of the Senate; and that the Senate gave commissions ('imperia') not only ordinary, but extraordinary, for which a Lex would have been necessary. That Pompeius, contrary to custom, and being a private person, was sent as proconsul into Spain, that Cilicia and the command in the Mithridatic war were given to L. Lucullus, to M. Antonius was given unlimited authority by sea ('infinitum illud imperium,' Verr. ii. 2. c. 3); and that every thing else was done in the same way without the people being consulted.

L. Philippus] The saying of Philippus is reported by Plutarch (Pomp. c. 17) in these words;—"It was on this occasion, as it is said, that some one in the senate asked Philippus with surprise, if he thought that Pompeius ought to be sent out as proconsul, and Philippus replied, 'Not as proconsul, as I think, but in place of the consuls' (ἀνθ' ὑπάτων), meaning that both the consuls of that year were good for nothing."

From this and many other passages it appears that the title 'pro consule' was not limited to those who after their consulship received a Provincia with the 'imperium.' The Scholiast on this passage of Cicero observes that Cicero takes the remark of Philippus to be an expression in favour of Pompeius, and not an expression of his contempt for the consuls: and some of the critics think that the Scholiast is right. Halm says that Cicero perverts the remark of Philippus in such a way as to make it evidence to the people that Philippus, a man of rank and character, seriously gave his testimony at that time in favour of Pompeius. The remark of Philippus may, I think, have both meanings. Whatever he thought of Pompeius, it seems that he thought him better than the two consuls together.

ex senatusconsulto legibus solutus consul ante fieret quam ullum alium magistratum per leges capere licuisset? quid tam incredibile quam ut iterum eques Romanus ex senatusconsulto triumpharet? Quae in omnibus hominibus nova post hominum memoriam constituta sunt, ea tam multa non sunt quam haec quae in hoc uno homine videmus. Atque haec tot exempla, tanta ac tam nova, profecta sunt in eundem hominem a Q. Catuli atque a ceterorum ejusdem dignitatis amplissimorum hominum auctoritate.

XXII. Quare videant ne sit periniquum et non ferendum, illorum auctoritatem de Cn. Pompeii dignitate a vobis comprobatam semper esse, vestrum ab illis de eodem homine judicium populique Romani auctoritatem improbari; praesertim quum jam suo jure populus Romanus in hoc homine suam auctoritatem vel contra omnes qui dissentiunt possit defendere: propterea quod isdem istis reclamantibus vos unum illum ex omnibus delegistis quem bello praedonum praeponeretis. Hoc si vos temere fecistis et rei publicae parum consuluistis, recte isti studia vestra suis consiliis regere conantur; sin autem vos plus tum in re publica vidistis, vos his repugnantibus per vosmetipsos dignitatem huic imperio, salutem orbi terrarum attulistis, aliquando isti principes et sibi et ceteris populi Romani universi auctoritati parendum esse fateantur. Atque in hoc bello

legibus solutus] It was declared that he should be free from the rules of the Lex Villia Annalis, which declared a man ineligible to the consulship before he was forty-two years of age, and from two Leges Corneliae, which declared a man ineligible to the consulship, if he had not been 'quaestor' and 'praetor.' Pompeius was in his thirty-sixth year when he was made consul, B.C. 70. Becker (Handbuch, ii. 2, p. 24) has a remark on 'ullum alium magistratum,' &c. He says that "Cicero by these words means only the Curule magistracies, of which the first was the aedileship. Pompeius however entered on his first consulship in his thirty-sixth year, and it follows from this that thirty-seven was the age for the aedileship, and consequently forty-three for the consulship; that is forty-two years must be completed."

The expression 'legibus solutus' occurs in a passage of the Digest (1. 3. 31): "Princeps legibus solutus est. Augusta autem licet legibus soluta non est, principes tamen illi privilegia tribuunt quae ipsi habent" (Ulpianus, Libro xiii. ad Legem Juliam et Papiam). This passage has been misunderstood by some people, and interpreted as evidence of the tyrannical character of the Roman imperial system.

Pompeius was elected consul before he had his second triumph, which explains, as Ferratius says, why the consulship is mentioned before the second triumph: "Metellus et Pompeius ex Hispaniis triumphaverunt: sed Pompeius hoc quoque triumpho adhuc eques Romanus ante diem quam consulatum iniret curru urbem invectus est" (Vell. Pat. ii. 30; Plutarch. Pomp. c. 22). The second triumph of Pompeius was therefore on the last day of December, B.C. 71, as Clinton concludes. See Vol. I. Verr. Act. i. c. 15, and the note.

22. *his repugnantibus*] 'iis repugnantibus:' Halm and Baiter.

Atque in hoc bello, &c.] All the part from these words to 'Quod si auctoritatibus,' &c., c. 23, has been condemned by some critics as not genuine. One reason for this judgment is that it has been said before (c. 13): 'Non enim solum bellandi virtus,' &c. Madvig says (Opusc. p. 132): "Omnem hanc partem orationis Ciceronis non esse vidit dudum Pantagathus, de qua re nihil dicendum puto, quod civis meus Blochius nuper de ea recte exposuit. Est

Asiatico et regio non solum militaris illa virtus, quae est in Cn. Pompeio singularis, sed aliae quoque virtutes animi magnae et multae requiruntur. Difficile est in Asia, Cilicia, Syria, regnisque interiorum nationum ita versari nostrum imperatorem ut nihil aliud nisi de hoste ac de laude cogitet. Deinde etiam si qui sunt pudore ac temperantia moderatiores, tamen eos esse tales propter multitudinem cupidorum hominum nemo arbitratur. Difficile est dictu, Quirites, quanto in odio simus apud exteras nationes, propter eorum quos ad eas per hos annos cum imperio misimus libidines et injurias. Quod enim fanum putatis in illis terris nostris magistratibus religiosum, quam civitatem sanctam, quam domum satis clausam ac munitam fuisse? Urbes jam locupletes et copiosae requiruntur, quibus caussa belli propter diripiendi cupiditatem inferatur. Libenter haec coram cum Q. Catulo et Q. Hortensio summis et clarissimis viris disputarem. Noverunt enim sociorum vulnera, vident eorum calamitates, querimonias audiunt. Pro sociis vos contra hostes exercitum mittere putatis, an hostium simulatione contra socios atque amicos? Quae civitas est in Asia quae non modo imperatoris aut legati, sed unius tribuni militum animos ac spiritus capere possit? XXIII. Quare etiam si quem habetis qui collatis signis exercitus regios superare posse videatur, tamen nisi erit idem qui se a pecuniis sociorum, qui ab eorum conjugibus ac liberis, qui ab ornamentis fanorum atque oppidorum, qui ab auro gazaque regia manus, oculos, animum cohibere possit, non erit idoneus qui ad bellum Asiaticum regiumque mittatur.

tamen declamatoris artificiose et Latine scribentis." Halm has examined the arguments of Blochius, and he has come to the conclusion "that this part of the speech, which some have considered inappropriate (ineptum) and altogether unworthy of the genius of Tullius, is composed by the orator with a certain excellent art." So much do opinions differ. I am of Halm's opinion.

Asia] Cicero (Ad Q. Fr. i. 1. c. 6) calls Asia 'tam corruptrice provincia;' the wealth of this province corrupted the governors and their officers. Tacitus (Agric. 6) calls it "divitem ac paratam peccantibus." Compare Cicero's despatch to the Senate (Ad Fam. xv. 1) when he was governor of Cilicia: "Nam sociorum auxilia," where he spoke of the wrongs (injuriae) inflicted on the 'socii' by the severity of the Roman rule, and of the consequences of it.

Urbes jam locupletes &c.] "There are now no cities so rich and well stocked as to present to a greedy plunderer a pretext for attacking them." This may be translated in various ways. I have only given the meaning.

coram] This is explained by Weiske to be the same as 'privatim,' and that is the meaning here.—'non modo:' Halm properly finds fault with one Tischer for translating this as follows: "die Städte Asiens sind nicht nur eines Imper. sondern sogar eines Tribunen Wünsche zu befriedigen unfähig." Tischer makes a mistake such as some of us make when we say that 'non modo' is here put for 'non modo non.' It has the same meaning, says Halm, as 'non dicam.'

23. *qui se a pecuniis*] An objection is made to 'se' by some critics, because 'manus, oculos, animum' occur further on; but 'se' is in all the MSS.

Ecquam putatis civitatem pacatam fuisse quae locuples sit? ecquam esse locupletem quae istis pacata esse videatur? Ora maritima, Quirites, Cn. Pompeium non solum propter rei militaris gloriam, sed etiam propter animi continentiam requisivit. Videbat enim praetores locupletari quot annis pecunia publica praeter paucos; neque eos quidquam aliud assequi classium nomine, nisi ut detrimentis accipiendis majore affici turpitudine videremur. Nunc qua cupiditate homines in provincias, quibus jacturis, et quibus conditionibus proficiscantur, ignorant videlicet isti qui ad unum deferenda omnia esse non arbitrantur; quasi vero Cn. Pompeium non quum suis virtutibus, tum etiam alienis vitiis magnum esse videamus. Quare nolite dubitare quin huic uni credatis omnia, qui inter tot annos unus inventus sit quem socii in urbes suas cum exercitu venisse gaudeant. Quod si auctoritatibus hanc caussam, Quirites, confirmandam putatis, est vobis auctor vir bellorum omnium maximarumque rerum peritissimus, P. Servilius, cujus tantae res gestae terra marique exstiterunt ut, quum de bello deliberetis, auctor vobis gravior nemo esse debeat; est C. Curio, summis vestris beneficiis, maximisque rebus gestis, summo ingenio et prudentia praeditus; est Cn. Lentulus, in quo omnes pro amplissimis vestris honoribus, summum consilium, summam gravitatem esse cognovistis; est C. Cassius, integritate, virtute, constantia singulari. Quare videte ut horum auctoritatibus illorum orationi qui dissentiunt respondere posse videamur.

Ecquam putatis] "Do you think that any state was ever reduced to obedience by them and left rich? that any state which is rich is considered by them as reduced to obedience?" They plunder the states which they bring in subjection to Rome. They do not consider any state to be obedient to Rome so long as it is rich. 'Pacata' is one of Caesar's words: "omnia Gallia pacata." (B. G. iii. 28.)

neque eos quidquam] Some critics object to 'eos,' and prefer the reading 'nos.' There is no difficulty in understanding 'eos:' "they have got nothing by their fleets except greater scandal for us, by the losses that they have sustained."

'Classium nomine' may seem a little ambiguous. It probably means little more than 'classibus;' or, as we say, 'in the matter of the fleets,' 'in their capacity as naval commanders.'

jacturis,] 'Jacturae' means here the money spent on bribery, either in bribing the voters at Rome, or in bribing 'magistratus,' or both (c. 13). The 'conditiones' are supposed by Gronovius to be the terms of the corrupt bargain, and he refers to Verr. Act. i. c. 6: "ea mansit in conditione atque pacto;" but in that passage 'conditione' has a different meaning. See the note, Vol. I.

P. Servilius,] Isauricus, consul B.C. 79, defeated the Isauri when he was proconsul (Vol. I. Verr. ii. 1. c. 21). C. Scribonius Curio, consul B.C. 76, proconsul of Macedonia, triumphed over the Thracians and Dardani. Cn. Cornelius Lentulus Clodianus, consul B.C. 72, was a 'legatus' of Pompeius in the war against the pirates. C. Cassius Varus, consul B.C. 73.

Quare videte ut] The critics make a difficulty here, and many have supposed the passage to be corrupt. There is not a plainer passage in Cicero's works. It means, as Halm says: "Take care that by the aid of these men's authority we may be considered to make a complete answer to what those others say."

XXIV. Quae quum ita sint, C. Manili, primum istam tuam et legem et voluntatem et sententiam laudo vehementissimeque comprobo, deinde te hortor ut auctore populo Romano maneas in sententia neve cujusquam vim aut minas pertimescas. Primum in te satis esse animi perseverantiaeque arbitror; deinde, quum tantam multitudinem cum tanto studio adesse videamus, quantam iterum nunc in eodem homine praeficiendo videmus, quid est quod aut de re aut de perficiendi facultate dubitemus? Ego autem, quidquid est in me studii, consilii, laboris, ingenii, quidquid hoc beneficio populi Romani atque hac potestate praetoria, quidquid auctoritate, fide, constantia possum, id omne ad hanc rem conficiendam tibi et populo Romano polliceor ac defero: testorque omnes deos, et eos maxime, qui huic loco temploque praesident, qui omnium mentes eorum qui ad rem publicam adeunt maxime perspiciunt, me hoc neque rogatu facere cujusquam, neque quo Cn. Pompeii gratiam mihi per hanc caussam conciliari putem, neque quo mihi ex cujusquam amplitudine aut praesidia periculis aut adjumenta honoribus quaeram; propterea quod pericula facile, ut hominem praestare oportet, innocentia tecti repellemus, honorem autem neque ab uno neque ex hoc loco, sed eadem illa nostra laboriosissima ratione vitae, si vestra voluntas feret, consequemur. Quamobrem, quidquid in hac caussa mihi susceptum est, Quirites, id ego omne me rei publicae caussa suscepisse confirmo, tantumque abest ut aliquam mihi bonam gratiam quaesisse videar, ut multas me etiam simultates partim obscuras, partim apertas intelligam, mihi non necessa-

24. *auctore populo Romano*] He speaks as if the people had already given their vote (comp. c. 22, at the beginning), which he could do, since the people so zealously supported the 'rogatio' of Manilius, that Tullius could altogether omit in his speech arguments for persuasion (Halm).

temploque praesident,] The speech was delivered in the forum (c. 1), where there were several temples. But the 'rostra' themselves were called a 'templum.' Livy (ii. 56) speaks of the place from which a public address was to be made as a 'templum' (occupant tribuni templum), in viii. 14: "Naves Antiatium partim in navalia subductae, partim incensae, rostrisque earum suggestum in foro extructum adornari placuit: Rostraque id templum appellatum."

ut hominem] Manutius thought that this meant 'so far as a man can be secured by his innocence;' but it means, as Halm says, 'so far as a man can secure that which is altogether in the power of the gods.' He compares (c. 16) "felicitate, quam de se praestare nemo potest."

honorem] The reading 'honores' appears to be a conjecture, and it is a very probable one; for 'pericula' corresponds to 'periculis,' and 'honores' would correspond to 'honoribus.' When Cicero uses the word 'honoribus' he certainly means the consulship, the next object of his ambition. If 'honorem' is right, I suppose it still means the consulship, 'the honour.' Benecke considers it to be the "abstract term, for the 'honores' are comprised in 'honor.'" I hardly know if 'honorem' can be satisfactorily explained. Shortly after he says 'hoc honore,' by which he appears to mean the praetorship.—'id ego omne:' E. V.; 'id omne ego,' Baiter.

rias, vobis non inutiles, suscepisse. Sed ego me hoc honore praeditum, tantis vestris beneficiis affectum, statui, Quirites, vestram voluntatem et rei publicae dignitatem et salutem provinciarum atque sociorum meis omnibus commodis et rationibus praeferre oportere.

vobis non inutiles,] He only means to say that he had made enemies by doing what was for the interest of the state; and that he might have avoided this enmity if he had not done what he had done (mihi non necessarias).

THE PROVINCE ASIA.

ATTALUS, the last king of Pergamum, at his death (B.C. 133), left his dominions to the Romans, and this was the origin of the Roman province of Asia. The province, as constituted B.C. 129, appears to have comprised Mysia, or the greater part of it, with Aeolis, Lydia, Ionia, and Caria with the Dorian cities, with the exception of Rhodus and the continental Peraea (Pro Flacco, c. 27). Cicero (In Verrem, ii. 1. c. 38) assigns all Phrygia to the province of Cilicia (B.C. 80. 79). But there were three Phrygian Dioceses which did not continue to be attached to Cilicia. During 62—56 B.C. they belonged to Asia; from 56—50 to Cilicia; and after B.C. 49 they were probably permanently attached to Asia. (Becker, Handbuch, &c. Vol. iii.)

Sulla divided Asia into forty Regiones (B.C. 84) for the purpose of fixing the assessment of the contribution of 20,000 talents which he imposed on the province (Plut. Sulla, c. 25; Pro Flacco, c. 12). He made forty principal towns the centres of as many districts, and he attached to each principal town a number of smaller places. This division appears to have been continued for the purpose of the farming of the Vectigalia of Asia (Pro Flacco, c. 37), which were let by the censors to the Publicani (Vol. I. Verr. ii. 2. c. 6). The dictator Caesar took from the Publicani the farming of the Vectigalia of Asia, which after the new arrangement were paid at the chief towns of each Regio by the contributory towns. In the chief towns were kept the surveys made for the purpose of fixing the amount of taxes, the titles to land, and the acts of hypothecation or mortgage.

These Regiones were different from the Conventus Juridici or judicial divisions of the province, of which ten are enumerated, and at a later time eleven; Ephesus, the residence of the governor, Tralles, Alabanda, Laodicea (Jurisdictio Cibyratica), which contained twenty-five towns, Apamea Cibotus or Celaenae, Synnada, Sardes, Smyrna, Adramyttium, and Pergamum. We do not know if this list is complete, but it shows us the extent of the province of Asia, so far as it goes.

The province of Asia contained much fertile land and many rich towns. The valleys of the Caicus, Hermus, Cayster and Maeander produce abundance of corn. The volcanic district of Lydia, the Catacecaumene, was noted for its wines. Synnada had valuable quarries.

Hierapolis was famed for its woollen dyes, and Cibyra, the centre of a great trade, for its manufacture of iron. Laodicea on the Lycus was celebrated for its fine wool, superior to the Milesian, and for the fine dye that was given to it. Colossae also was noted both for its wool and its dye. Apamea Cibotus, at the junction of the Marsyas and the Maeander, was a great centre of commerce, next to Ephesus (Strabo, p. 577), and a depôt for all the wares of Italy and Hellas. Miletus, the mother of many colonies, had its woollen manufactories. The great cities of Asia were rich and splendid, full of works of art, the residence of an ingenious, commercial, and industrious population. The raw products of Asia were numerous and varied; and the artizans were ingenious. The low land probably produced more grain than was required for the home consumption, and the hills were well adapted for the pasturage of cattle and sheep. The green slopes near Alabanda in Caria are still covered with sheep, and from this and other tracts of Caria and Phrygia Miletus derived its supplies of wool. There is still good timber in some of the hilly parts of Asia. The climate, owing to the great difference in the elevation of the country, is adapted for every kind of product. Near Halicarnassus in Caria the palm-tree and the orange grow: the low lands are warmed by a tropical sun, while the high lands are still clothed with the snow of winter.

So rich and industrious a country presented an attractive field to the money-making and money-loving Italian. The merchants and capitalists of Italy flocked to this happy land in great numbers, perhaps even before it became a Roman province. When the great massacre of the Italians was planned by Mithridates and executed, thousands of them were put to death. Those Italians who were not engaged in trade and commerce were the agents and servants of the farmers of the revenue, who collected the various dues (Pro Lege Manilia, c. 6); the nature of which has been already explained (Vol. I. ii. 3. c. 6). The associations of the Publicani and those who carried on trade in Asia employed large capitals; some employed their own, and the capital of others consisted of money borrowed or entrusted to them by the people in Italy at a venture. Thus the commercial relations between Italy and the rich province of Asia were so intimate, that any great losses in Asia were felt at Rome and in Italy (Pro Lege Manilia, c. 7). The great entrepôt for the commerce between Asia and Europe was at this time the little rock of Delos (ib. c. 18).

Great oppression was exercised in the province of Asia by the Publicani and their agents in the collecting of the dues, and in exacting enormous rates of interest for money lent. Some of this money was originally lent to the cities to enable them to pay the contribution that Sulla had laid on them: or as Plutarch says (Lucullus, c. 20), "the

common debt originated in the twenty thousand talents which Sulla had laid on Asia as contribution, and twice this amount was repaid to the lenders, though they had indeed now brought the debt up to the amount of one hundred and twenty thousand talents by means of the interest." The governors of the province had to keep on good terms with the Publicani, and at the same time to protect the provincials. The letter of Cicero to his brother Quintus (Ad Q. Fr. i. 1. c. 11), when he was governor of Asia, one of the most instructive pieces of antiquity, clearly shows the great difficulty of administering the province. After having told his brother that he must look after the interests of all, remove the cause of their annoyance, and provide for their security, so as to be called and to be considered the father of Asia, he adds: "But this good intention and activity of yours meet with great obstacles in the Publicani, for if we oppose them, we shall alienate from us and from the state an order that has done us excellent service, and through us has been closely united with the state. But if we shall comply with their wishes in all respects, we shall allow those to be completely ruined, whose security, nay, whose interests generally, it is our duty to provide for. This is the only difficulty, if we choose to consider the matter well, in your administration." Before the enactment of the Lex Aurelia, the Publica Judicia at Rome were in the hands of the Equites (Vol. I. Excursus II.), and as the Publicani belonged either exclusively or almost exclusively to this class, it was in the power of the Equites at Rome either to cause a great deal of trouble to a governor who had opposed them in his province, or to acquit him if he was brought to trial for mal-administration, and for not restraining the irregular practices of the Publicani and their agents. A dishonest governor would accordingly be ready to allow the Publicani to oppress the Asiatics, for if he let the Publicani alone, they would be content to give him no trouble after his term of office was expired. An honest governor who attempted to check their dishonest practices ran the risk of being prosecuted when he returned to Rome, and convicted. For under these circumstances, it would be easier to convict an honest governor on a false charge than to convict a dishonest governor on true charges. This appeared in the case of P. Rutilius Rufus, who acted like an honest man in Asia, and paid the penalty for it (Pro Fonteio, c. 17, note).

The Greek cities of Asia were successively under Lydian, Persian, and Roman dominion. Under the Romans they had security against all external enemies, but they felt the weight of heavy contributions and taxes, which was aggravated by the way in which the agents of the Publicani collected them: yet these cities were still rich, for they were industrious and commercial. Unlike Rome, whose wealth and power were derived from arms, the riches of these Asiatic states were derived

from agriculture, manufactures, and commerce. They had long supplied a large part of the ancient world with the products of their industry. In some of these towns there was a degree of civil equality which only exists in a manufacturing and commercial state.

Cicero speaks of the turbulent public assemblies of Phrygia and Mysia; of the cobblers and beltmakers of Pergamum; of the artizans and shopkeepers, and "all those dregs of states" who attended the public meetings, and carried measures by their clamours (Pro Flacco, c. 7, 8). He speaks with the pride of a Roman of men who were artizans and shopkeepers, but the artizans and shopkeepers of the Asiatic towns were the democracy and the strength of the people. On the occasion of St. Paul's visit to Ephesus (Acts xviii.) great was the tumult that was stirred up by the artizans, who saw danger to their craft if the worship of Diana was overthrown by the new doctrine.

Enormous quantities of gold and silver passed from Asia to Italy, the produce of forced contributions, of taxes, and of the many irregular means by which the Romans enriched themselves in Asia; but the money flowed back again to Asia by the way of commerce. The rich Italians gave back to the Asiatics their money in return for the things which their luxurious habits required. The Greek has always been a trader, an artizan, a money-maker. The Italian loved money too, but the habits of the Romans were not like those of the Greeks. They went into the provinces to make a fortune by farming the taxes, by dealing in money, by acting as bankers and money-lenders, and sometimes by farming large tracts, and by sheep-feeding. They returned to Italy, to Rome, to spend their money, and to indulge in their love of ease and luxury. The following remark of Dureau de la Malle (Économie Politique des Romains, ii. p. 399) is just: "Roman Italy, from the destruction of Carthage to the foundation of Constantinople, existed in the presence of Greece and of the East, in the same condition in which Spain was with respect to the rest of Europe in the eighteenth century. Alberoni said, with as much truth as sagacity: 'Spain is to Europe what the mouth is to the body; every thing passes through it, and nothing stays.' Such was Roman Italy in the last century of the Republic, and under the Emperors. Rome attracted, swallowed up the gold of the provinces as Spain did the precious metals of Mexico and Peru; both took the sign of wealth for wealth, a fictitious for a real value, and the money continued slipping from their hands; for Italy, like Spain, consumed without reproducing. The East was essentially productive, commercial, and manufacturing: taxes, peculation, extortion caused new wealth to flow successively to Rome, which the industry of Egypt, of Greece, and of Asia, drew back again by exchange, and restored to their source by the great channel of commerce and navigation."

Repton.
Sixth. Christmas Term 1870.

PRO A. CLUENTIO HABITO

ORATIO.

INTRODUCTION.

A. Cluentius Habitus was a distinguished citizen of Larinum (Larino Vecchio), an inland city in the north part of Apulia, near the river Tifernus. Cluentius died in the consulship of L. Sulla and Q. Pompeius Rufus, B.C. 88, leaving a wife Sassia, and a son and a daughter (c. 5). Soon after the father's death his daughter married her kinsman A. Aurius Melinus; but the mother spoiled the happiness of the young couple by seducing her own son-in-law, and causing a separation of the husband and wife. Sassia afterwards married Melinus; and thus became the wife of a man who had been the husband of her daughter. The young Cluentius took his sister's part, and quarrelled with his mother.

Melinus had a kinsman who was murdered at Larinum. Statius Albius Oppianicus was suspected to be the murderer, and Melinus threatened him with a prosecution. Oppianicus fled to the camp of Q. Metellus, who was one of the Roman commanders in the Marsic war; and he soon returned to Larinum with full power from L. Sulla to do what he liked. Being made one of the Quatuorviri of Larinum, he prepared to avenge himself on Melinus, and to put out of the way others who were dangerous to him. Melinus was proscribed and murdered. Sassia now married Oppianicus, the man who had caused her husband's death. From this time began a deadly quarrel between Oppianicus and young Cluentius, who instituted a prosecution against Oppianicus at the instigation of the Decuriones or Senate of Larinum. He charged Oppianicus with having declared the Martiales, or public servants of Mars, to be free men and Roman citizens. This prosecution excited the fiercest enmity against Cluentius both of Oppianicus and his mother, who wished to put him out of the way in order to get rid of the prose-

cution and to lay hold of his property. Oppianicus addressed himself to a well-known assassin, L. Fabricius, who applied to Diogenes, a slave of Cleophantus, the physician of Cluentius, and endeavoured to persuade him to give poison to Cluentius instead of the medicine which his master prepared for him. The slave informed his master of the design of Fabricius, and thus not only was the scheme spoiled, but the poison was discovered in the possession of Scamander, a freedman of L. Fabricius. Scamander was tried and convicted, and also L. Fabricius. Some time after Cluentius prosecuted Oppianicus before the same Judices who had convicted the two men. Cannutius conducted the prosecution for Cluentius. The man (quaesitor) who presided at the trial was C. Junius. Oppianicus was defended by the Trib. Pl. L. Quinctius. Oppianicus seeing his danger, applied, as Cicero says, to Staienus, one of the Judices, to whom he gave a large sum of money for the purpose of corrupting the Judices and securing his acquittal. Staienus kept the money; and all the Judices, thirty-two in number, declared Oppianicus guilty, with the exception of five of them. Upon this L. Quinctius declared before the people, that the Judices had been bribed by Cluentius; and this charge was so far believed that C. Junius, who had been Aedile, and was looking forward to the Praetorship, lost his election and was obliged to retire from Rome (c. 29). Oppianicus after his condemnation went into exile, and five years after he died in the neighbourhood of Rome (c. 62).

Sassia charged her son Cluentius with having poisoned her husband with the assistance of M. Asellius. Two slaves, Strato and Nicostratus, were put to the torture several times to get evidence from them against Cluentius; but they gave none. At last Sassia persuaded her step-son Oppianicus, to whom she promised in marriage her daughter by Melinus (c. 66), to prosecute Cluentius for the murder of his father. A. Attius managed the case for Oppianicus (c. 23). Cluentius was tried before Q. Voconius, B.C. 66, in the consulship of M. Aemilius Lepidus and L. Volcatius Tullus (c. 54). Cicero, who was praetor in this year, undertook the defence of Cluentius, who had no other advocate (c. 70).

The charge of poisoning Oppianicus was easily answered, for there appears to have been no evidence in support of it. But it was generally believed that the Judices in the trial at which C. Junius presided had been bribed to give a verdict against Oppianicus; and this opinion, whether true or false, seems to have been the circumstance which caused most prejudice against Cluentius. It is true that the guilt of Cluentius did not at all depend on the fact of his having bribed these Judices or not; and the fact of the bribery could not be tried at the same time as the charge of poisoning. Still if it could in any way appear that Cluentius had used bribery to get a verdict against Oppianicus, this fact

would render it probable that he would use any means to deprive Oppianicus of his life after having by a verdict deprived him of his character. Cicero found it very difficult to deal with this unfavourable opinion about Cluentius, as in fact it is always more difficult to convince people of the falsehood of vague reports and rumours against a man's character than to answer a specific charge, as that of poisoning. For the specific charge is reduced to one fact or more, it is expressed in writing, and if it is not proved, the evidence will show whether the charge is altogether unfounded, or is still probably true, though not capable of strict proof.

Cluentius was tried under the Lex Cornelia de sicariis et veneficis (c. 56). The real matter, the charge of poisoning, is not examined by Cicero till we come to near the end of the oration (c. 60).

This is the substance of the matter which Klotz has stated in his Introduction to this oration. I have used for the text of this oration Classen's edition and Baiter's in the second edition of Orelli's Cicero. Nearly all Classen's notes are on the various readings and the text. His edition (Bonn, 1831) is a model of judgment and good sense; and I have very seldom seen any reason for rejecting his opinion. His notes written in Latin are short, and well written. Baiter generally follows Classen. The following are the abbreviations used by Baiter in his various readings at the foot of the page. "P = Palimpsestus Taurinensis apud Peyronum; S = Codex olim Salisburgi, nunc in bibliotheca regia Monacensi sub no. 35ª servatus, seculo fere decimo quinto elegantissima manu in membranis formae maximae conscriptus; T = Codex membranaceus forma 4. maj. in bibliotheca Laurentiana n. 12. plutei XLVIII. Lagom. n. 12.—Ex eodem quo S fonte derivatus, sed illo mendosius scriptus et praetermissione singularum vocum insignis." The family likeness between S and T will easily be discovered by a comparison of the readings. "F = Codex olim bibliothecae S. Bartholomaei Faesulis inter Faesulanos apud Bandinium n. 187. Lagom. 1; M = Laurentianus plut. LI n. 10. Lagom. 64; membranaceus seculi undecimi, characteribus Langobardicis, forma 4.—Hic liber omnium antiquissimus haud dubie pro fonte habendus est eorum, in quibus eaedem lacunae apparent. R = reliqui codices praeter eos quos quovis loco enumeravimus; A = editio Ascensiana prima a. 1511; L = editio Lambiniana, a. 1566."

M. TULLII CICERONIS

PRO

A. CLUENTIO HABITO ORATIO.

I. Animadverti, judices, omnem accusatoris orationem in duas divisam esse partes, quarum altera mihi niti et magno opere confidere videbatur invidia jam inveterata judicii Juniani, altera tantum

The title of this oration, Pro A. Cluentio Habito, was restored by Classen. All the editions had the form Habitus till Lambinus, following Cujacius, introduced the form Avitus. Classen observes, that all through this oration most of the MSS., and the best, have the form Habitus, and also the MSS. of Quintilian in several places (iv. 2. 16; v. 10. 68). The participial form Habitus may be compared with such names as Tacitus, Novatus, and others. The name Habitus occurs in the Fasti Capitol. ap. Gruter. C. Inscr. n. 205, and without the aspirate on an old inscription quoted by F. Ursini, "Aur. Abitus Mil. Coh. X. Pr." It is added by Th. Mommsen that the form Habitus is confirmed by a "titulus Muratorianus optimae aetatis ubi legitur: *A. Vibio Habito L. Apr.*"—In the Dig. (48. 18. 7), "Edictum Divi Augusti quod proposuit Vibio Avito et Lucio Aproniano consulibus," we ought accordingly to read Habito for Avito. And so Clinton has it, A. D. 8: "Fast. Capitol. —Ex K. Jul. L. Apronius A. Vibius Habitus." They were the consuls of the second half of this year.

1. *quarum altera*] Classen supposes that 'accusator' is to be understood with 'videbatur,' and that the two words 'altera' are in the ablative case. I think that he is mistaken. I take them both to be in the nominative; but it is not certain.

judicii Juniani,] This allusion is explained in the Introduction, and in Vol. I. Verr. Act. i. c. 10, note, and ii. 1. c. 61, note. Cicero, in this chapter, says that the only matter before the court was the charge of poisoning, and that Cluentius was not on his trial on the charge of having procured the conviction of Oppianicus by bribery. Yet the greatest part of Cicero's speech is in answer to the charge of Cluentius having by foul means procured the conviction of Oppianicus. This may however be understood, if we consider the Roman fashion of introducing into a trial matter that was foreign to the question before the court. It is true that the Lex Cornelia applied both to those who murdered a man or procured his death, and also to those who by unfair means procured a man's conviction in a 'caussa capitalis.' Klotz maintains that Cluentius was tried on both charges, and that this very speech proves what he says; for he asks, How could a prosecutor unite two things in one charge, if the terms of the Lex did not allow it? This is easily answered. The prosecutor did so in a manner, and as it created a prejudice against his client, Cicero must answer it. Klotz mainly relies in support of his opinion on the following passage of Marcianus (Dig. 48. 8. 1. § 1):—"Praeterea tenetur (lege Cornelia de sicariis et veneficis) qui homines necandi causa venenum confecerit,

modo consuetudinis caussa timide et diffidenter attingere rationem veneficii criminum; qua de re lege est haec quaestio constituta. Itaque mihi certum est hanc eandem distributionem invidiae et criminum sic in defensione servare, ut omnes intelligant nihil me nec subterfugere voluisse reticendo nec obscurare dicendo. Sed quum considero quomodo mihi in utraque re sit elaborandum, altera pars et ea quae propria est judicii vestri et legitimae veneficii quaestionis, per mihi brevis et non magnae in dicendo contentionis fore videtur, altera autem, quae procul ab judicio remota est, quae contionibus seditiose concitatis accommodatior est quam tranquillis moderatisque judiciis, perspicio quantum in agendo difficultatis et quantum laboris sit habitura. Sed in hac difficultate illa me res tamen, judices, consolatur, quod vos de criminibus sic audire consuestis ut eorum omnem dissolutionem ab oratore quaeratis, ut non existimetis plus vos ad salutem reo largiri oportere quam quantum defensor purgandis criminibus consequi et dicendo probare potuerit; de invidia autem sic inter nos disceptare debetis, ut non quid dicatur a nobis, sed quid oporteat dici, consideretis. Agitur enim in criminibus A. Cluentii proprium periculum, in invidia caussa communis. Quamobrem alteram partem caussae sic agemus ut vos doceamus, alteram sic ut oremus. In altera diligentia vestra nobis adjungenda est, in altera fides imploranda. Nemo est enim qui invidiae

dederit, quive falsum testimonium dolo malo dixerit, quo quis publico judicio rei capitalis damnaretur, quive magistratus judexve quaestionis sub capitalem caussam pecuniam acceperit, ut publica lege reus fieret." But this passage does not prove Klotz's assertion. It contains no penalty against the briber. Nor does the following, which he cites as confirmatory of the passage of Marcianus, from Paulus (Recept. Sent. v. 23. § 1): "Lex Cornelia poenam deportationis infligit eis qui hominem occiderint, ejusque rei caussa furtive faciendi cum telo fuerint, et qui venenum hominis necandi caussa habuerint, vendiderint, paraverint, falsum testimonium dixerint quo quis periret, mortisve caussam praestiterint." See the oration, c. 53, 54.

Klotz admits that Cicero in the first chapter denies that the affair of the trial before Junius was a part of the charge against Cluentius, but Cicero does this, as Klotz says, to draw the attention of the Judices to the part of the charge which was easily refuted, as if it were the principal matter, though both charges must have been in themselves equally important, and both were legally founded on the law pursuant to which the judgment was to be given.—There is no meaning at all in this. It is contrary to what Cicero says, contrary to sound sense. The charge of poisoning contained a fact to be proved; and if not proved, the man must be acquitted. The answer to the calumny about the Junianum Judicium is an answer to a fact which was not to be proved, perhaps could not have been proved, even if it were true; but for that reason it was the thing that Cicero had to contend against most vigorously. He had to remove a prejudice from the minds of the 'judices' before he could safely intrust them with a judgment on a matter of fact. This is what he says himself and repeats (c. 58).

nos disceptare] 'nos disceptare,' P. M. Baiter: 'vos disceptare,' S. T. F., Classen. Garatoni observes the Judices "inter accusatorem et reum disceptabant;" and that the words 'a nobis,' which follow, apply to Attius and Tullius, for they would be absurd, if they applied only to Tullius.

sine vestro ac sine talium virorum subsidio possit resistere. Equidem quod ad me attinet, quo me vertam nescio. Negem fuisse illam infamiam judicii corrupti? negem esse illam rem agitatam in contionibus, jactatam in judiciis, commemoratam in senatu? Evellam ex animis hominum tantam opinionem, tam penitus insitam, tam vetustam? Non est nostri ingenii. Vestri auxilii est, judices, hujus innocentiae sic in hac calamitosa fama, quasi in aliqua perniciosissima flamma atque in communi incendio, subvenire. XI. Etenim sicut aliis in locis parum firmamenti et parum virium veritas habet, sic in hoc loco falsa invidia imbecilla esse debet. Dominetur in

ac sine talium] The 'talium virorum' are the Judices whom Cicero is addressing, which is plain, and hardly needs the confirmation of such passages as Pro P. Quintio, c. 16, 'apud tales viros;' and c. 26; Pro Rosc. Am. c. 19; and Divin. In Caecil. c. 16, 'non esse hoc tales viros commissuros,' quoted by Classen, who is troubled with the conjunction 'ac,' and thinks that it ought to be omitted. Halm writes 'sine vestro talium,' and compares De Or. ii. 89, 'hi tales viri.' Baiter has it in his text thus: 'vestro [ac sine] talium.'

Non est nostri ingenii.] These words refer to what precedes. 'Vestri auxilii est' refer to what follows.

2. *falsa invidia*] This word 'invidia' is difficult to translate. Forcellini says the primary meaning of 'invidia' is 'sorrow or pain arising from the sight of another man's prosperity.' But this is not the complete description of 'envy.' We must add, 'and a wish to see the prosperous person brought down to our own level or lower.' This is the malignant feeling which reigns in society. Cicero complains of it as the foul spot on his own times, and he adds that "its aim was to break off the very flower of a man's character" (Pro Balbo, c. 6); which shows that he knew what envy was. Comp. Aesch. Ag. v. 805.

But 'invidia' has another meaning, not well explained in Forcellini; we may collect what it is from the first two chapters of this oration. Cicero opposes 'invidia' to 'crimina' (c. 1). A 'crimen' or charge is the proper matter for a judicial inquiry. 'Invidia' is a thing far out of the way of a court, it is more suitable for a public speech: it is a vague thing, and does not require, admit, or endure the precision necessary in a formal charge; it does not submit to the rigid inquiry which is founded on evidence. As there is (c. 2) a 'falsa invidia,' so we may infer there may be a 'vera invidia.' The place where 'invidia' rules is in public assemblies; in a court of justice it lies prostrate (jacet): its power lies in the opinion and the talk of the foolish; it is spurned by the good sense of the wise: the first sudden onset of 'invidia' is powerful; when a little time has intervened, and the matter is examined, it sinks into senile feebleness. The definition of a fair trial, handed down by the sober and honest men of former days, is perfect: "in a court of justice let crime be punished, even if there is no 'invidia;' and let 'invidia' be put down, if there is no crime." Again (c. 3), "there is nothing that a man has to fear so much as 'invidia;' nothing which an innocent man can wish for more, after he has got 'invidia,' than a fair trial, for it is here only that an end to false evil report can at last be found."

We have no word which expresses the two sides of 'invidia.' It is the bad name, the evil report which falls on a man; the bad opinion that people have of him. This is one side. It is also the slander of the malevolent; the idle talk of those who talk for talk's sake, because they must say something, and who would rather injure any man's character without a cause, than submit to the pain of keeping their tongues quiet. Cicero has well described the terrible consequences of this propensity to talk of our neighbours' affairs, to repeat any thing that is heard to a man's discredit, to alter, to magnify, what has been heard, for never is a slander told twice in the same way. Of all the evils that man inflicts on his neighbour, none is greater than the harm that is done by malicious and by idle talk. Of all the curses that the world is cursed with none is greater than the wicked or the idle tongue. The mischief of this mischievous member is laid before us in a few pages by Bishop Butler in one of his admirable discourses (Upon the Government

contionibus, jaceat in judiciis; valeat in opinionibus ac sermonibus imperitorum, ab ingeniis prudentium repudietur; vehementes habeat repentinos impetus, spatio interposito et caussa cognita consenescat. Denique illa definitio judiciorum aequorum, quae nobis a majoribus tradita est, retineatur, ut in judiciis et sine invidia culpa plectatur, et sine culpa invidia ponatur. Quamobrem a vobis, judices, antequam de ipsa caussa dicere incipio, haec postulo: primum id, quod aequissimum est, ut ne quid huc praejudicati afferatis. Etenim non modo auctoritatem sed etiam nomen judicum amittemus, nisi hic ex ipsis caussis judicabimus, si ad caussas judicia jam facta domo deferemus. Deinde si quam opinionem jam vestris mentibus comprehendistis, si eam ratio convellet, si oratio labefactabit, si denique veritas extorquebit, ne repugnetis, eamque animis vestris aut libentibus aut aequis remittatis. Tum autem quum ego una quaque de re dicam et diluam, ne ipsi quae contraria sint taciti cogitationi vestrae subjiciatis, sed ad extremum exspectetis, meque meum dicendi ordinem servare patiamini: quum peroraro, tum, si quid erit praeteritum, animo requiratis.

of the Tongue). Cluentius may have been innocent of the attempt to bribe the Judices in the trial of Oppianicus. The length of Cicero's argument on this matter justifies no presumption of his guilt. Cicero knew well that slander that has lived for years cannot be easily destroyed; and he may have done quite right—indeed we ought to assume that so skilful an advocate knew how to manage his case—in clearing Cluentius of all suspicion in this matter before he came to the charge on which he was tried. For if the evil report against him were not shown to be false, the 'judices' might have given their verdict under the opinion that a man who could procure the condemnation of an innocent person by dishonest means was a very likely man to poison him; and they might supply the defect of proof about the poisoning by their belief that he was a man capable of doing it.

It remains to show how 'invidia,' if the primary meaning is 'envy,' came to mean the bad opinion under which a man labours from the slander or the idle talk of others. And this can only be explained by supposing that the man who is the object of this evil talk is exalted enough to be an object of envy, or, to express it in other words, is so far above others that they wish to see him humbled. If Cluentius or any other man suffers under evil opinion, it must be because he is great enough to be talked about, for evil reports about a man of no mark at all do not circulate among his superiors; it is only among those who affect to be a man's equals, or who admit that they are his inferiors; and both of these classes rejoice to see him humbled. So when the opportunity comes they fasten upon it, and never leave the man so long as they can do him harm. I conclude then that Cluentius was rich enough, well enough known, to be an object of envy, and consequently an object of slander. Machiavelli has well described the eternal malignity of envy (Discorsi, iii. c. 30):—"Quell' altro (Pietro Soderini) credeva col tempo, con la bontà, con la fortuna sua, con beneficarne alcuno, spegnere questa invidia, vedendosi d'assai fresca età, e con tanti nuovi favori che gli arrecava il modo del suo procedere, che credeva poter superar quelli tanti, che per invidia se gli opponevano, senza alcuno scandolo, violenza e tumulto; e non sapeva che il tempo non si può aspettare, la bontà non basta, la fortuna varia, e la malignità non trova dono che la plachi. Tanto che l'uno e l'altro (Savonarola and Soderini) di questi due rovinarono, e la rovina loro fu causata da non aver saputo o potuto vincere questa invidia."

animo requiratis.] This is said to be the MSS. reading, and the common reading 'a me requiratis' is a correction. Classen says "'animo requirere' is nothing else

III. Ego me, judices, ad eam caussam accedere quae jam per annos octo continuos ex contraria parte audiatur, atque ipsa opinione hominum tacita prope convicta atque damnata sit, facile intelligo; sed si qui mihi deus vestram ad me audiendum benevolentiam conciliarit, efficiam profecto ut intelligatis nihil esse homini tam timendum quam invidiam; nihil innocenti suscepta invidia tam optandum quam aequum judicium, quod in hoc uno denique falsae infamiae finis aliquis atque exitus reperiatur. Quamobrem magna me spes tenet, si quae sunt in caussa explicare atque omnia dicendo consequi potuero, hunc locum consessumque vestrum, quem illi horribilem A. Cluentio ac formidolosum fore putaverunt, eum tandem ejus fortunae miserae multumque jactatae portum ac perfugium futurum. Tametsi permulta sunt, quae mihi, antequam de caussa dico, de communibus invidiae periculis dicenda esse videantur, tamen, ne diutius oratione mea suspensa exspectatio vestra teneatur, aggrediar ad crimen cum illa deprecatione, judices, qua mihi saepius utendum esse intelligo, sic ut me audiatis quasi hoc tempore haec caussa primum dicatur, sicuti dicitur; non quasi saepe jam dicta et numquam probata sit. Hodierno enim die primum veteris istius criminis diluendi potestas est data: ante hoc tempus error in hac caussa atque invidia versata est. Quamobrem dum multorum annorum accusationi breviter dilucideque respondeo, quaeso ut me, judices, sicuti facere instituistis, benigne attenteque audiatis.

IV. Corrupisse dicitur A. Cluentius judicium pecunia, quo inimicum innocentem Statium Albium condemnaret. Ostendam, judices, primum, quoniam caput illius atrocitatis atque invidiae fuit innocentem pecunia circumventum, neminem umquam majoribus criminibus, gravioribus testibus esse in judicium vocatum: deinde ea de eo praejudicia esse facta ab ipsis judicibus, a quibus

than that which he had just said, 'tacitum cogitationi subjicere;' for that which the orator would not have the 'judices' do while he is making his defence, he urges them to do after he has made it." But Garatoni thinks that 'requiratis' would be enough: at least, he says, after the speech was made, the witnesses were examined, not the 'advocati' for the defence. He thinks that 'a me' may be a gloss to 'praeteritum,' and that 'animo' may have been suggested by 'cogitatione.'

4. *praejudicia*] These are the trials before the trial of Oppianicus, and the verdicts against the accused. As Oppianicus was involved in the same charge, the previous condemnations were 'praejudicia' with respect to him; they rendered his condemnation a probable event even before his trial (Pro Caecina, c. 2, note 1 and c. 7, note). There was against Oppianicus both the verdict in the previous trials, and the evidence on his own trial. If he was guilty, it is more likely that he would try to bribe than that Cluentius would; and he was declared guilty. If Cicero could show that the bribery was on the part of Oppianicus, and not on the part of Cluentius, then the justice of the verdict against Oppianicus would be confirmed. Quintilian (Inst. Or.

condemnatus est, ut non modo ab iisdem sed ne ab aliis quidem ullis absolvi ullo modo posset. Quum haec docuero, tum illud ostendam quod maxime requiri intelligo, judicium illud pecunia esse tentatum non a Cluentio, sed contra Cluentium; faciamque ut intelligatis in tota illa caussa quid res ipsa tulerit, quid error affinxerit, quid invidia conflarit.

Primum igitur illud est ex quo intelligi possit debuisse Cluentium magno opere caussae confidere, quod certissimis criminibus et testibus fretus ad accusandum descenderit. Hoc loco faciendum mihi, judices, est ut vobis breviter illa quibus Albius est condemnatus crimina exponam. Abs te peto, Oppianice, ut me invitum de patris tui caussa dicere existimes, adductum fide atque officio defensionis. Etenim tibi si in praesentia satisfacere non potuero, tamen multae mihi ad satisfaciendum reliquo tempore facultates dabuntur: Cluentio nisi nunc satisfecero, postea mihi satisfaciendi potestas non erit. Simul et illud quis est qui dubitare debeat contra damnatum et mortuum pro incolumi et pro vivo dicere; quum illi in quem dicitur damnatio omne ignominiae periculum jam abstulerit, mors vero etiam doloris, hic autem, pro quo dicimus, nihil possit offensionis accipere sine acerbissimo animi sensu ac molestia et sine summo dedecore vitae ac turpitudine. Atque ut intelligatis Cluentium non accusatorio animo, non ostentatione aliqua aut

iv. 5) in the chapter on Partitio says that some persons have found fault with this Partitio or division of the matter; for Cicero first says that Oppianicus was charged with great crimes, and there were witnesses to prove them; second, that previous verdicts on this same matter of poisoning had been delivered by the 'judices' who tried him; third, that an attempt was made to bribe the 'judices,' not by Cluentius, but against Cluentius, or to secure the acquittal of Oppianicus; and this Partitio was blamed because if Cicero proved the third thing, there was no occasion to say any thing of the first two. Quintilian does not blame Cicero, who, I suppose, understood what he was about. It was admitted that the 'judices' had been bribed at the trial of Oppianicus, but it might not be easy to prove by whom and for what purpose they were bribed, whether to acquit or condemn. If the guilt of Oppianicus was made clear or probable, and it was likely that he would be condemned, it is also likely that the 'judices' were bribed by him (see c. 7). On the other hand, the verdict against him is not very consistent with the fact of his being the briber, unless it could be explained how it happened that the bribery failed. It is plain from Cicero's argument "Primum igitur," &c., that his proof of Oppianicus being the briber was founded on the fact of the certainty of his guilt.

Simul et illud &c.] 'Illud' stands without any strict grammatical construction, as it is called. The reader may make a pause after 'illud' or put a comma, if he likes. It means: "At the same time this too—who is there that ought to hesitate." 'Illud' refers to the proposition which follows in the form of a question.

non ostentatione] Klötz quotes Cicero, De Off. ii. 14: "adolescentes magnam sibi gloriam ex eloquentia comparant, sive ex accusatione sive ex defensione," &c. Compare Plutarch, Lucullus, c. 1: "It was indeed the popular notion, that to prefer an accusation was a reputable measure, even when there was no foundation for it, and they were glad to see the young men fastening on offenders, like well-bred whelps laying hold of wild beasts."

gloria adductum, sed nefariis injuriis, quotidianis insidiis, proposito ante oculos vitae periculo, nomen Oppianici detulisse, paullo longius exordium rei demonstrandae petam; quod quaeso, judices, ne moleste patiamini. Principiis enim cognitis multo facilius extrema intelligetis.

V. A. Cluentius Habitus fuit, pater hujusce, judices, homo non solum municipii Larinatis ex quo erat, sed etiam regionis illius et vicinitatis, virtute, existimatione, nobilitate facile princeps. Is quum esset mortuus Sulla et Pompeio consulibus, reliquit hunc annos xv natum, grandem autem et nubilem filiam; quae brevi tempore post patris mortem nupsit A. Aurio Melino, consobrino suo, adolescenti in primis, ut tum habebatur, inter suos et honesto et nobili. Quum essent hae nuptiae plenae dignitatis, plenae concordiae, repente est exorta mulieris importunae nefaria libido, non solum dedecore verum etiam scelere conjuncta. Nam Sassia, mater hujus Habiti—mater enim a me in omni caussa, tametsi in hunc hostili odio et crudelitate est, mater, inquam, appellabitur; neque umquam illa ita de suo scelere et immanitate audiet ut naturae nomen amittat: quo enim est ipsum nomen amantius indulgentiusque maternum, hoc illius matris, quae multos jam annos et nunc quum maxime filium interfectum cupit, singulare scelus majore odio dignum esse ducetis.—Ea igitur mater Habiti, Melini illius adolescentis, generi sui, contra quam fas erat amore capta, primo, neque id ipsum diu, quoquo modo poterat in illa cupiditate continebatur; deinde ita flagrare coepit amentia, sic inflammata ferri libidine, ut eam non pudor, non pudicitia, non pietas, non macula familiae, non hominum fama, non filii dolor, non filiae maeror a cupiditate revocaret. Animum adolescentis, nondum consilio ac ratione firmatum,

5. *fuit,*] I have kept the comma after 'fuit.' Classen omits it. The comma is of no use, except to prevent a man from translating, "A. Cluentius was this man's father." It means "There was one A. Cluentius, the father of my client here." See Vol. I. Divin. c. 17, note.—'Larinatis:' see the Introduction.

consobrino] 'Consobrinus' is 'consororinus.' "Consobrinus, consobrina, id est qui quaeve ex fratribus aut sororibus progenerantur; sed quidam recte consobrinos eos proprie putant dici, qui ex duabus sororibus progenerantur, quasi consororinos" (Justin. Inst. iii. Tit. 6). The children of brothers and sisters could intermarry (Inst. i. Tit. 10).

scelere conjuncta] Classen compares Phil. v. 7: "hujus mendicitas aviditate conjuncta;" and De Or. i. 57.—'in omni caussa:' The common reading is 'nominis caussa.' But S. T. have 'in omni caussa;' and Lambinus followed this reading. The other MSS. are said to have 'nominis caussa.'

indulgentiusque] Many Latin forms of expression cannot be translated. He speaks of the very name of mother being loving and indulgent, by which he means to say that a mother is loving and indulgent, and that the bare mention of the name suggests her affectionate feeling to her children. We have admitted 'indulgens' into our language, and we have no meaning for it except the original meaning.—'non pudicitia:' om. S. T.

pellexit iis omnibus rebus quibus illa aetas capi ac deliniri potest, Filia, quae non solum illo communi dolore muliebri in ejusmodi viri injuriis angeretur, sed nefarium matris pellicatum ferre non posset, de quo ne queri quidem se sine scelere posse arbitraretur, ceteros sui tanti mali ignaros esse cupiebat, in hujus amantissimi sui fratris manibus et gremio maerore et lacrimis consenescebat. Ecce autem subitum divortium; quod solatium malorum omnium fore videbatur. Discedit a Melino Cluentia ut in tantis injuriis non invita, ut a viro, non libenter. Tum vero illa egregia ac praeclara mater palam exsultare laetitia, triumphare gaudio coepit, victrix filiae, non libidinis. Itaque diutius suspicionibus obscuris laedi famam suam noluit: lectum illum genialem quem biennio ante filiae suae nubenti straverat, in eadem domo sibi ornari et sterni expulsa atque exturbata filia jubet. Nubit genero socrus, nullis auspicibus, nullis auctoribus, funestis ominibus omnium. VI. O mulieris scelus in-

pellicatum] We have no word for this except 'seduction,' but 'seduction' does not express that it is the 'seduction' by a 'pellex.' Gellius (iv. 3) defines a 'pellex:' "pellicem appellatam probrosamque habitam eam, quae juncta consuetaque esset cum eo in cujus manu mancipioque alia matrimonii caussa foret." Masurius defined 'pellex' to be simply a woman who lived with a man as his wife, without being his wife. Granius Flaccus gave both this definition, and that which Gellius gives (Dig. 50. 16. 144).

divortium;] The woman had the power of doing herself justice. She separated from her unworthy husband, and declared the marriage to be at an end. No state, I believe, none that is called civilized, has ever allowed a husband or wife to dissolve marriage so easily as the Romans did. The Roman power of divorce was consistent with the Roman notion of marriage, which originated in consent, existed by consent, and ceased when the consent no longer existed. It is said by the Roman writers that there was no divorce at Rome during the first five centuries; a story which is certainly false, if the power of divorce existed during the first five centuries. No formality was necessary in divorce more than what was sufficient to declare the intention. There was no difficulty about the children. They belonged to the father. When a Roman united himself to a woman with the marital affection, and 'liberorum procreandorum caussa,' it was plain that he procreated the children for himself. The law gave him the 'Patria potestas' over his children, such a power as no other law gave to a people (Gaius i. 55). The woman bore the child, but the fruit of her womb was his (Dig. 25. 4. 1. § 1).

triumphare gaudio] Caesar uses this expression in a letter to Cicero (Ad Att. ix. 16).

genialem] As the marriage was dissolved between Cluentia and Melinus, the relation of 'socrus' and 'gener' ceased between Sassia and Melinus (Pro P. Quintio, c. 6). This is a true conclusion from the fact of the divorce. But still the moral notions of the people would be offended by a mother taking for her husband the man who had been her daughter's husband; and a man whom she had seduced. Cicero says nothing about the illegality of this marriage between a man and a woman who had once been in the relation of son and mother. In the time of Gaius (i. 63) this kind of marriage was not admitted to be a marriage: "item eam (ducere non licet) quae nobis quondam socrus aut nurus aut privigna aut noverca fuit." Compare Justinian, Instit. i. Tit. 10, De Nuptiis. The 'lectus genialis' is the marriage bed. "Lectus genialis in aula est" (Horace, Ep i. 1. v. 85, Macleane's Horace).

ominibus omnium] As he has said, "nullis auspicibus, nullis auctoribus," it is clear that 'funestis ominibus' requires the word 'omnium,' which is opposed to 'nullis,' as Classen remarks; and it may be true, as Klotz adds, that Cicero intended to make the alliteration 'ominibus omnium.'

We must suppose that an 'auspex' was present at marriages, to give to them their

credibile, et praeter hanc unam in omni vita inauditum! o libidinem effrenatam et indomitam! o audaciam singularem! nonne timuisti, si minus vim deorum hominumque famam, at illam ipsam noctem facesque illas nuptiales? non limen cubiculi? non cubile filiae? non parietes denique ipsos superiorum testes nuptiarum? Perfregit ac prostravit omnia cupiditate ac furore: vicit pudorem libido, timorem audacia, rationem amentia. Tulit hoc commune dedecus familiae, cognationis, nominis graviter filius; augebatur autem ejus molestia quotidianis querimoniis et assiduo fletu sororis: statuit tamen nihil sibi in tantis injuriis ac tanto scelere matris gravius esse faciendum quam ut illa ne uteretur; nam quae videre sine summo animi dolore non poterat, ea, si matre uteretur, non solum videre sed etiam probare suo judicio putaretur.

Initium quod huic cum matre fuerit simultatis audistis. Pertinuisse hoc ad caussam, tum quum reliqua cognoveritis, intelligetis. Nam illud me non praeterit, cujuscumque modi sit mater, tamen in judicio filii de turpitudine parentis dici vix oportere. Non essem ad ullam caussam idoneus, judices, si hoc, quod in communibus hominum sensibus atque ipsa natura positum atque infixum est, id ego, qui ad hominum pericula defendenda adjungerer, non viderem. Facile intelligo non modo reticere homines parentum injurias, sed etiam animo aequo ferre oportere. Sed ego ea quae ferri pos-

religious character by taking the 'auspicia.' Perhaps his attendance became in time a matter of form. He would get his dinner for his presence. The 'auctores' were the witnesses perhaps. A woman in Sassia's condition did not require the formal consent of any person to her marriage, but if she made any disposition of her property, some 'auctor' would be necessary. Cicero means to say generally that nobody was present: the marriage was not sanctioned by any body's presence.

6. *nonne*] The reading of S.T.F., and of the best MSS. of Quintilian (Inst. iv. 2), who cites this passage, from 'O mulieris scelus' to 'testes nuptiarum.' But Quintilian has 'timuisse.' Baiter writes in this passage of Cicero, 'nonne timuisse — nuptiales?' But we ought either to read 'non timuisse — nuptiales;' or with Classen, 'nonne timuisti — nuptiales?' S. T. have 'timuisti.'

dedecus familiae,] The 'jam' which some MSS. and some editions place between 'dedecus' and 'familiae' is properly ejected by Classen and Baiter.—'nam quae videre:' S. T. have 'namque,' which means 'nam quae.' I have followed Classen, who has restored the passage satisfactorily. Baiter, following Garatoni, has 'ne, quae' &c. If we take the reading 'ne quam,' we make 'ea' the ablative case.

in communibus hominum sensibus] "In the common understanding of mankind." Horace (Sat. i. 3. v. 66) has 'communi sensu' in a like meaning. Classen omits the 'in' before 'ipsa natura,' following S. T. He thinks that 'in' is better omitted, for thus the genitive 'hominum' is more easily referred to 'naturam,' as the sense requires. Baiter has 'in ipsa.'

qui—adjungerer] The reading of Classen and Baiter, who follow the best MSS. There are several objections to the text of some editions, "quum ad amici pericula depellenda adhiberer." 'Amici' is not a term general enough; besides, Cicero does not call Cluentius his friend. From the reading 'hominum' came the corrupt reading 'animum,' which is easily corrupted into 'amici' (Classen). 'Qui,' the reading of S. T. P., is undoubtedly the true reading; for it expresses Cicero's habit or practice, not an accidental circumstance.

sunt, ferenda, quae taceri, tacenda esse arbitror. Nihil in vita vidit calamitatis A. Cluentius, nullum periculum mortis adiit, nihil mali timuit, quod non totum a matre esset conflatum et profectum. Quae hoc tempore sileret omnia, atque ea, si oblivione non posset, tamen taciturnitate sua tecta esse pateretur; sed vero sic agitur ut prorsus reticeri nullo modo possit. Hoc enim ipsum judicium, hoc periculum, illa accusatio, omnis testium copia quae futura est, a matre initio est adornata, a matre hoc tempore instruitur atque omnibus ejus opibus et copiis comparatur. Ipsa denique nuper Larino hujus opprimendi caussa Romam advolavit; praesto est mulier audax, pecuniosa, crudelis; instituit accusatores, instruit testes; squalore hujus et sordibus laetatur; exitium exoptat: sanguinem suum profundere omnem cupit, dummodo profusum hujus ante videat. Haec nisi omnia perspexeritis in caussa, temere a nobis illam appellari putatote: sin erunt et aperta et nefaria, Cluentio ignoscere debebitis quod haec a me dici patiatur; mihi ignoscere non deberetis, si tacerem.

VII. Nunc jam summatim exponam quibus criminibus Oppianicus damnatus sit, ut et constantiam A. Cluentii et rationem accusationis perspicere possitis. Ac primum caussa accusandi quae fuerit ostendam, ut id ipsum A. Cluentium vi ac necessitate coactum fecisse videatis. Quum manifesto venenum deprehendisset quod vir matris Oppianicus ei paravisset, et res non conjectura sed oculis ac manibus teneretur, neque in caussa ulla dubitatio posset esse, accusavit Oppianicum; quam constanter et quam diligenter, postea dicam: nunc hoc scire vos volui, nullam huic aliam accusandi caussam fuisse, nisi uti propositum vitae periculum et quotidianas capitis insidias hac una ratione vitaret. Atque ut intelligatis iis accusatum esse criminibus Oppianicum ut neque accusator timere neque reus sperare potuerit, pauca vobis illius judicii crimina exponam; quibus cognitis, nemo vestrum mirabitur illum diffidentem rebus suis ad Staienum atque ad pecuniam confugisse.

¶ Larinas quaedam fuit Dinaea, socrus Oppianici, quae filios habuit

sed vero sic agitur] This is the true reading: 'sed vero sic agit' has no meaning in it. 'Sed vero,' it is said, seldom come together. See Vol. I. Verr. ii. 5. c. 6, note.

testium copia quae futura est] The witnesses would be examined after the speech. See c. 3, note.—'appellari:' 'named,' 'addressed by name.' See c. 24.

7. *sperare potuerit*] S. T. The reading 'sperare debuerit,' which Baiter has, is the conjecture of Lambinus.

Dinaea] She had children by two husbands, as the text shows, Aurius and Magius.—'in ergastulo:' the Ergastulum was a place in which slaves were kept. Some slaves were unchained; others were chained and lodged in Ergastula, the construction of which is described by Columella (i. 6). These slaves worked out of doors in the

M. et Numerium Aurios, et Cn. Magium et filiam Magiam, nuptam Oppianico. M. Aurius adolescentulus, bello Italico captus apud Asculum, in Q. Sergii senatoris, ejus qui inter sicarios damnatus est, manus incidit, et apud eum fuit in ergastulo. Numerius autem Aurius, frater ejus, mortuus est, heredemque Cn. Magium fratrem reliquit. Postea Magia uxor Oppianici mortua est; postremo unus qui reliquus erat Dinaeae filius Cn. Magius est mortuus. Is heredem fecit illum adolescentem Oppianicum, sororis suae filium, eumque partiri cum Dinaea matre jussit. Interim venit index ad Dinaeam, neque obscurus neque incertus, qui nuntiaret ei filium ejus M. Aurium vivere et in agro Gallico esse in servitute. Mulier amissis liberis quum unius recuperandi filii spes esset ostentata, omnes suos propinquos filiique sui necessarios convocavit, et ab iis flens petivit ut negotium susciperent, adolescentem investigarent, sibi restituerent eum filium quem tamen unum ex multis fortuna reliquum esse voluisset. Haec quum agere instituisset, oppressa morbo est. Itaque testamentum fecit ejusmodi ut illi filio H-S quadringenta millia legaret, heredem institueret eundem illum Oppianicum, nepotem suum; atque his diebus paucis est mortua. Propinqui tamen illi, quemadmodum viva Dinaea instituerant, ita mortua illa ad vestigandum M. Aurium cum eodem illo indice in agrum Gallicum profecti sunt. VIII. Interim Oppianicus, ut erat, sicuti multis ex rebus reperietis, singulari scelere et audacia, per quendam Gallicanum familiarem suum primum illum indicem pecunia corrupit; deinde ipsum Aurium non

day time with their fetters on, and were lodged in the Ergastula at night. Many of the slaves employed in agricultural labour, in the quarries, in mines, in drawing water, and other hard work, wore fetters, to prevent them running away, as we may suppose, or rising against their masters. Refractory slaves also were sent to the Ergastulum. Travellers and others were sometimes kidnapped and shut up in these horrible places. Appian (B. C. iv. 30) has a piteous story of a proscribed boy, who had been brought up delicately, and fell into the hands of one of these cruel tyrants, who put him in an Ergastulum (ἐπὶ ἔργῳ καταδεῖν εἱθισμένου). Lipsius as usual has collected all the learning about Ergastula (Elect. ii. c. 15. Vol. I. Op. ed. 1675).

partiri] Oppianicus was 'heres,' and took the 'hereditas,' but he was requested to share the property with Dinaea, who accordingly would take one-half as a legacy. A request is sufficient to give a legacy. There were various forms in which a legacy was given (Gaius ii. 192).

H-S quadringenta millia] This is the reading of P., which Classen has taken, and, as he says, the sum seems enough for a woman in an Apulian town to leave. The reading in the common editions, 'ccccIↃↃↃ millia,' is ridiculous. Classen observes that ccccLIIII, the reading of many MSS., means the same as ccccIↃↃↃↃ, for CLI was equivalent to CIↃ; and this amount was multiplied ten times by placing C on one side and I on the other.

heredem institueret] See Vol. I. Verr. ii. 1. c. 41.—'his diebus:' Garatoni altered this to 'iis,' in which Baiter has followed him. But 'his' is right. She died within a few days after making her will. See Vol. I. Index, 'Diebus, illis.'—'vestigandum:' the reading of S. T. The common reading is 'investigandum.'

magna jactura facta tollendum interficiendumque curavit. Illi autem qui erant ad propinquum investigandum et recuperandum profecti, litteras Larinum ad Aurios, illius adolescentis suosque necessarios, mittunt, sibi difficilem esse investigandi rationem quod intelligerent indicem ab Oppianico esse corruptum. Quas litteras A. Aurius, vir fortis et experiens et domi nobilis, et M. illius Aurii perpropinquus, in foro palam, multis audientibus, quum adesset Oppianicus, recitat, et clarissima voce se nomen Oppianici, si interfectum M. Aurium esse comperisset, delaturum esse testatur. Interim brevi tempore illi qui erant in agrum Gallicum profecti, Larinum revertuntur: interfectum esse M. Aurium renuntiant. Animi non solum propinquorum, sed etiam omnium Larinatium odio Oppianici et illius adolescentis misericordia commoventur. Itaque quum A. Aurius, is qui antea denuntiarat, clamore hominem ac minis insequi coepisset, Larino profugit, et se in castra clarissimi viri Q. Metelli contulit. Post illam autem fugam, sceleris et conscientiae testem, numquam se judiciis, numquam legibus, numquam inermem inimicis committere ausus est, sed per illam L. Sullae vim atque victoriam Larinum in summo timore omnium cum armatis advolavit; quattuorviros quos municipes fecerant sustulit; se a Sulla et tres praeterea factos esse dixit, et ab eodem sibi esse imperatum ut Aurium illum qui sibi delationem nominis et capitis periculum ostentarat, et alterum Aurium et ejus L. filium et Sex. Vibium, quo sequestre in illo indice corrumpendo dicebatur esse usus, proscribendos interficiendosque curaret. Itaque illis crudelissime interfectis non mediocri ab eo ceteri proscriptionis et mortis metu tenebantur. His rebus in caussa judicioque patefactis, quis est qui illum absolvi potuisse arbitraretur? IX. Atque haec parva sunt: cognoscite reliqua, ut non aliquando condemnatum esse Oppianicum, sed aliquamdiu incolumem fuisse miremini.

Primum videte hominis audaciam. Sassiam in matrimonium ducere, Habiti matrem, illam cujus virum A. Aurium occiderat,

8. *non magna*] This means it did not cost him much to get the young man taken off.

experiens] Horace, Ep. i. 17. 41:—

"Aut virtus nomen inane est,
Aut decus et pretium recte petit experiens vir."

It is an active man.

perpropinquus,] P. T. This Aurius appears to be Sassia's young husband (c. 5).

quattuorviros] They were the chief magistrates of the municipium, who formed a 'collegium' of IIIIviri. The quatuorviri consisted of a double set of magistrates, 'IIviri juri dicundo,' who corresponded to the Roman praetors, and generally of two aediles. The IIviri summoned the Senate or decuriones, and presided at the meetings, and they had the 'jurisdictio,' whence they were called 'IIviri juri dicundo.' (Becker, Handbuch, &c. ii. 1. p. 350.)—'sequestre:' see Vol. I. Act. i. c. 12.—'tenebantur:' the reading of S. T.: the other reading is 'terrebantur.'

concupivit. Utrum impudentior hic qui postulet, an crudelior illa si nubat, difficile dictu est. Sed tamen utriusque humanitatem constantiamque cognoscite. Petit Oppianicus ut sibi Sassia nubat, et id magno opere contendit. Illa autem non admiratur audaciam, non impudentiam aspernatur, non denique illam Oppianici domum viri sui sanguine redundantem reformidat: sed quod haberet tres ille filios, idcirco se ab his nuptiis abhorrere respondit. Oppianicus qui pecuniam Sassiae concupivisset, domo sibi quaerendum remedium existimavit ad eam moram quae nuptiis afferebatur. Nam quum haberet ex Novia infantem filium, alter autem ejus filius, Papia natus, Teani Apuli, quod abest a Larino XVIII millia passuum, apud matrem educaretur, arcessit subito sine caussa puerum Teano; quod facere nisi ludis publicis aut festis diebus antea non solebat. Mater misera nihil mali suspicans mittit. Ille se Tarentum proficisci quum simulasset, eo ipso die puer, quum undecima hora in publico valens visus esset, ante noctem mortuus et postridie antequam luceret combustus est. Atque hunc tantum maerorem matri prius hominum rumor quam quisquam ex Oppianici familia nuntiavit. Illa quum uno tempore audisset sibi non solum filium sed etiam exsequiarum munus ereptum, Larinum confestim exanimata venit, et ibi de integro funus jam sepulto filio fecit. Dies nondum decem intercesserant quum ille alter filius infans necatur. Itaque nubit Oppianico continuo Sassia laetanti jam animo, et spe optime confirmato; nec mirum quae se non nuptialibus donis sed filiorum funeribus delinitam videret. Ita, quod ceteri propter liberos pecuniae cupidiores solent esse, ille propter pecuniam liberos amittere jucundum esse duxit. XX. Sentio, judices, vos pro vestra humanitate, his tantis sceleribus breviter a me demonstratis vehementer esse commotos. Quo tandem igitur animo fuisse illos arbitramini, quibus his de rebus non modo audiendum fuit, verum etiam judicandum? Vos auditis de eo in quem judices non estis; de eo quem non videtis; de eo quem odisse jam non potestis; de eo qui et naturae et legibus satisfecit; quem leges exsilio, natura morte mulctavit. Auditis non ab inimico; auditis sine testibus:

9. *domo*] 'Out of his own house,' 'out of his own family.' There were two towns named Teanum, one of which was in Apulia, on or near the Frento. The other Teanum (Teano) was in Campania, on the Via Latina.—'arcessit:' 'accersit,' S. T., Classen.

Ita, quod ceteri] Some of the commentators have been troubled with this 'quod.' It introduces the matter, which is expounded by what follows, "propter liberos pecuniae cupidiores." Classen refers to c. 67, "Ita quod apud ceteros," &c. See Vol. I. Verr. ii. 1. c. 47: "Quod vos non oblitos esse non arbitror, quae multitudo," &c., and the note.

10. *his de rebus*] 'iis,' &c. S. T., Classen, Baiter.

auditis, quum ea, quae copiosissime dici possunt, breviter strictimque dicuntur. Illi audiebant de eo de quo jurati sententias ferre debebant; de eo cujus praesentis nefarium et consceleratum vultum intuebantur; de eo quem omnes oderant propter audaciam; de eo quem omni supplicio dignum esse ducebant. Audiebant ab accusatoribus; audiebant verba multorum testium; audiebant quum una quaque de re a P. Cannutio homine eloquentissimo graviter et diu diceretur. Et est quisquam, qui, quum haec cognoverit, suspicari possit Oppianicum judicio oppressum et circumventum esse innocentem.

Acervatim jam reliqua, judices, dicam, ut ad ea quae propiora hujusce caussae et adjunctiora sunt perveniam. Vos quaeso memoria teneatis, non mihi hoc esse propositum ut accusem Oppianicum mortuum; sed, quum hoc persuadere vobis velim judicium ab hoc non esse corruptum, hoc uti initio ac fundamento defensionis, Oppianicum hominem sceleratissimum et nocentissimum esse damnatum, qui uxori suae Cluentiae, quae amita hujus Habiti fuit, quum ipse poculum dedisset, subito illa in media potione exclamavit se maximo cum dolore emori, nec diutius vixit quam locuta est; nam in ipso sermone hoc et vociferatione mortua est. Et ad hanc mortem repentinam vocesque morientis omnia praeterea quae solent esse indicia et vestigia veneni in illius mortuae corpore fuerunt. Eodemque veneno C. Oppianicum fratrem necavit. XI. Neque est hoc satis: tametsi in ipso fraterno parricidio nullum scelus praetermissum videtur, tamen ut ad hoc nefarium facinus accederet aditum sibi aliis sceleribus ante munivit. Nam quum esset gravida Auria, fratris uxor, et jam appropinquare partus putaretur, mulierem veneno interfecit ut una illud quod erat ex fratre conceptum necaretur. Post fratrem aggressus est; qui sero, jam exhausto illo poculo mortis, quum et de suo et de uxoris interitu clamaret, testamentumque mutare cuperet, in ipsa significatione hujus voluntatis est mortuus. Ita mulierem ne partu ejus ab hereditate fraterna excluderetur necavit; fratris autem liberos prius vita privavit quam illi hanc ab natura [propriam] lucem accipere potuerunt; ut omnes intelligerent nihil ei clausum, nihil sanctum esse posse, a cujus audacia fratris liberos ne materni quidem corporis custodiae tegere potuissent. Memoria teneo

Cluentiae,] Om. T.—'emori:' S.T. Classen says that 'emori' means to die with pain, to die wretchedly, as in c. 14, and Pro Rabirio Post. c. 10.

11. *parricidio*] See Vol. I. Verr. ii. 5. c. 66.—'poculo mortis:' Gruter erased 'mortis,' but it is in the MSS.—'propriam lucem:' 'propriam' is not in S. T.

Milesiam quandam mulierem, quum essem in Asia, quod ab heredibus secundis accepta pecunia partum sibi ipsa medicamentis abegisset, rei capitalis esse damnatam; nec injuria, quae spem parentis, memoriam nominis, subsidium generis, heredem familiae, designatum rei publicae civem sustulisset. Quanto est Oppianicus in eadem injuria majore supplicio dignus! siquidem illa, quum suo corpori vim attulisset, se ipsa cruciavit; hic autem idem illud effecit per alieni corporis mortem atque cruciatum. Ceteri non videntur in singulis hominibus multa parricidia suscipere posse, Oppianicus inventus est qui in uno corpore multos necaret. XII. Itaque, quum hanc ejus consuetudinem audaciamque cognosset avunculus illius adolescentis, Oppianici, Cn. Magius, isque gravi morbo affectus esset, et heredem illum sororis suae filium faceret, amicis adhibitis, praesente matre sua, Dinaea, uxorem suam interrogavit essetne praegnans. Quae quum se esse respondisset, ab ea petivit ut se mortuo apud Dinaeam quae tum ei mulieri socrus erat, quoad pareret habitaret, diligentiamque adhiberet ut id quod conceperat servare et salvum parere posset. Itaque ei testamento legat grandem pecuniam a filio, si qui natus erit; ab secundo herede nihil legat. Quid de Oppianico suspicatus sit videtis: quid judicarit obscurum non est. Nam cujus filium faceret heredem,

ab heredibus secundis] From those who took as 'heredes,' if the child with which she was pregnant should not be born alive, or should die before attaining a certain age. (Gaius, ii. 179.) The 'secundi heredes' bribed the woman to destroy the child in her body, so that they might take the property. This practice of procuring abortion ('abortio'), called also 'partus abductio,' was considered immoral, but it was not punished at Rome in Cicero's time, as we may conclude from this passage. The first law on this matter which is mentioned belongs to the joint reign of Sept. Severus and his son Antoninus Caracalla; for which there is the authority of Marcianus (Dig. 47. 11. 4): "Divus Sev. et Ant. rescripserunt eam quae data opera partum abegit a praeside in temporale exilium dandam; indignum enim videri potest impune eam maritum liberis fraudasse." The fruit of the woman belonged to the husband (Dig. 25. 4. 1. § 1). See Rein, Das Criminalrecht &c. p. 445. S. T. omit 'secundis.'

multos necaret.] S. T., Classen; 'plures necaret,' Baiter.

12. *natus erit:*] S. T. Classen has perhaps done right in preferring 'natus erit,' the formal words of a will, to 'natus esset,' which Baiter has. The formal words are: "Titius filius meus mihi heres esto. Si filius meus mihi heres erit." (Gaius, ii. 179.) Compare Dig. 28. 2. 29, quoted by Classen: "Si filius meus vivo me morietur, tunc si quis mihi ex eo nepos sive quae neptis post mortem meam in decem mensibus proximis quibus filius meus moreretur, natus, nata erit, heredes sunto." As to the expression 'legat . . a filio,' see Pro Caecina, c. 4. Magius thought that he would secure his wife's fidelity by giving her a large legacy, if the child was born, and by giving her nothing if there was no child; for the 'secundi heredes' were not charged with the payment of any legacy. But the husband had not foresight enough to conceive the villany of Oppianicus, nor the treachery of a woman.

cujus filium] The reading of P. S. T., which Classen has properly preferred to 'quum ejus.' It does not appear that the testator had other children. If he had not, there is nothing unusual in the use of the term 'liberis,' which may mean a single child, and here it means the child that was expected to come, if there were no

eum tutorem liberis non ascripsit. Quid Oppianicus fecerit cognoscite, ut illum Magium intelligatis non longe animo prospexisse morientem. Quae pecunia mulieri legata erat a filio, si qui natus erit, eam praesentem Oppianicus non debitam mulieri solvit; si haec solutio legatorum, et non merces abortionis appellanda est. Quo illa pretio accepto multisque praeterea muneribus, quae tum ex tabulis Oppianici recitabantur, spem illam quam in alvo commendatam a viro continebat, victa avaritia, sceleri Oppianici vendidit. Nihil posse jam ad hanc improbitatem addi videtur: attendite exitum. Quae mulier obtestatione viri decem illis mensibus ne domum quidem ullam nisi socrus suae nosse debuit, haec quinto mense post viri mortem ipsi Oppianico nupsit. Quae nuptiae non diuturnae fuerunt. Erant enim non matrimonii dignitate sed sceleris societate conjunctae.

XIII. Quid, illa caedes Asuvii Larinatis, adolescentis pecuniosi, quam clara tum recenti re fuit, quam omnium sermone celebrata! Fuit Avillius quidam Larinas perdita nequitia et summa egestate, arte quadam praeditus ad libidines adolescentulorum excitandas accommodatus; qui ut se blanditiis et assentationibus in Asuvii

other children. In c. 11 'fratres autem liberos' seems to mean one child, and that child still unborn. Not to name Oppianicus tutor was equivalent to an imputation on his character.—'non longe:' S. T. Classen has done right in keeping the 'non.' Baiter has omitted it; and so he has spoiled the sense. The testator did not foresee what a bad woman would do. He was too honest to comprehend what a bad wife was capable of doing.

tabulis] His books were produced in some way, and made evidence against him.

decem illis mensibus] 'During those ten months,' a period known to every body. Ovid (Fasti, i. 33) says of Romulus' year of ten months:

> "Quod satis est utero matris dum prodeat infans,
> Hoc anno statuit temporis esse satis.
> Per totidem menses a funere conjugis uxor
> Sustinet in vidua tristia signa domo."

The Edictum (Dig. 3. 2. 11. § 3) declared that if a widow married before the ten months expired, her new husband became Infamis, if he was a Paterfamilias; if he was not, his father became 'infamis.' The father of the widow also became 'infamis,' if his daughter was in his power, and he consented to the marriage. The 'infamia' of the woman was not mentioned, but the penalty was afterwards extended to her. The ground of the Infamia was not the failure in respect (pietas) to the deceased, but the risk of a doubtful paternity, if the woman married again soon after her husband's death. Consequently, if she was delivered of a child soon after her husband's death, the reason of the rule no longer existed, and she could marry as soon as she pleased after the child's birth. The period of ten months was fixed, according to the Roman notion of the duration of pregnancy, the utmost limit of which was supposed to be ten months, as Ovid says. (Dig. 38. 16. 3. § 11.) The rule about the ten months was in the Twelve Tables, and in the Fourth Table (Gellius, iii. 16). The emperor Hadrian in a special case decided after hearing the evidence that a child could be born as late as the eleventh month. Gellius tells the story. The decision was founded on the woman's high character, but perhaps the emperor was mistaken.

The Roman law in the Justinian Code was as it is here stated. Savigny examines the question as to the earlier law at some length, because it is not quite so clear. (System, &c. Vol. II. Beylage, iii.)

13. *accommodatus;*] I have followed Classen here. It is said that all the MSS.

consuetudinem penitus immersit, Oppianicus continuo sperare coepit hoc se Avillio, tamquam aliqua machina admota, capere Asuvii adolescentiam et fortunas ejus patrias expugnare posse. Ratio excogitata Larini est, res translata Romam. Iniri enim consilium facilius in solitudine, perficere rem ejusmodi commodius in turba posse arbitrati sunt. Asuvius cum Avillio Romam est profectus. Hos vestigiis Oppianicus consecutus est. Jam ut Romae vixerint, quibus conviviis, quibus flagitiis, quantis et quam profusis sumptibus, non modo conscio sed etiam conviva et adjutore Oppianico, longum est dicere mihi, praesertim ad alia properanti. Exitum hujus assimulatae familiaritatis cognoscite. Quum esset adolescens apud mulierculam quandam, atque ibi pernoctaret, ibi diem posterum commoraretur, Avillius, ut erat constitutum, simulat se aegrotare et testamentum facere velle. Oppianicus obsignatores ad eum, qui neque Asuvium neque Avillium nossent, adducit, et illum Asuvium appellat ipse. Testamento Asuvii nomine obsignato disceditur. Avillius illico convalescit. Asuvius autem brevi illo tempore, quasi in hortulos iret, in arenarias quasdam extra portam Esquilinam perductus occiditur. Qui quum unum jam et alterum diem desideraretur, neque in iis locis ubi ex consuetudine quaerebatur inveniretur, et Oppianicus in foro Larinatium dictitaret, nuper se et suos amicos testamentum ejus obsignasse, liberti Asuvii, et nonnulli amici, quod eo die quo postremum Asuvius visus erat, Avillium cum eo fuisse et a multis visum esse constabat, in eum invadunt et hominem ante pedes Q. Manlii, qui tum erat triumvir, constituunt;

have 'accommodatus.' It is doubtful what P. has. There seems to be no objection to the two participles.—'Iniri:' P. has 'inire;' and Baiter.—'ibi pernoctaret:' P. has 'ubi.' But this reading is justly rejected by Classen, who has 'ibi' with the other MSS. Baiter has injudiciously 'ubi pernoctaret.' —'obsignato:' Roman testaments were sealed with the seals of witnesses. Gaius describes the formality of attestation. There were five witnesses besides the 'libripens.' The witnesses must be 'cives Romani puberes.' After going through the ceremony of the 'mancipatio,' the testator "tabulas testamenti tenens ita dicit: Haec ita ut in his tabulis cerisque scripta sunt, ita do, ita lego, ita testor, itaque vos, Quirites, testimonium mihi perhibetote: et hoc dicitur nuncupatio." (Gaius, ii. 104.) He says nothing of the signing and sealing, but that was the practice, at least at a later time, when seven witnesses were required, and both subscription and sealing (Justin. Inst. ii. Tit. 10. De Testamentis ordinandis).

brevi illo tempore,] In the short space of time which followed between the making of the testament and the murder.—'arenarias:' 'sandpits.' They are mentioned by Varro, R. R. 1. 2, with 'lapidicinae,' 'stone-quarries.'

triumvir,] He was one of the Triumviri Capitales, who, among other duties, as it appears, had the power of arresting people charged with murder. They had also the care of prisons and superintended capital punishments. Cicero speaks of Manlius as a low fellow who had often been punished himself, and was now raised by the popular vote to an office which gave him the power of punishing in the place where he had been punished himself. The Columna is the Columna Maenia. See

atque illic continuo, nullo teste, nullo indice, recentis maleficii conscientia perterritus, omnia, ut a me paullo ante dicta sunt, exponit, Asuviumque a sese consilio Oppianici interfectum fatetur. Extrahitur domo latitans Oppianicus a Manlio: index Avillius ex altera parte coram tenetur. Hic quid jam reliqua quaeritis? Manlium plerique noratis: non ille honorem a pueritia, non studia virtutis, non ullum existimationis bonae fructum umquam cogitarat, sed ex petulanti atque improbo scurra in discordiis civitatis ad eam columnam, ad quam multorum saepe conviciis perductus erat, tum suffragiis populi pervenerat. Itaque rem cum Oppianico transigit: pecuniam ab eo accipit, caussam et susceptam et manifestam relinquit. Ac tum in Oppianici caussa crimen hoc Asuvianum quum testibus multis, tum vero indicio Avillii comprobabatur; in quo alligatum Oppianici nomen primum esse constabat, ejus quem vos miserum atque innocentem falso judicio circumventum esse dicitis.

XIV. Quid aviam tuam, Oppianice, Dinaeam, cui tu es heres, pater tuus non manifesto necavit? ad quam quum adduxisset medicum illum suum, jam cognitum et saepe victorem, per quem interfecerat plurimos, mulier exclamat se ab eo nullo modo curari velle quo curante suos omnes perdidisset. Tum repente Anconitanum quendam, L. Clodium, pharmacopolam circumforaneum, qui casu tum Larinum venisset, aggreditur, et cum eo H-S duobus millibus, id quod ipsius tabulis [tum] est demonstratum, transigit. L. Clodius, qui properaret, cui fora multa restarent, simul atque introductus est, rem confecit; prima potione mulierem sustulit: neque postea Larini punctum est temporis commoratus. Eadem hac Dinaea testamentum faciente, quum tabulas prehendisset Oppiani-

Vol. I. Divin. c. 16, where there is a note on Columna Maenia. Horace says of an upstart slave (Ep. iv. 11),

> "Sectus flagellis hic triumviralibus
> Praeconis ad fastidium."

The triumviri held a court probably near the Columnia Maenia, and acted as police magistrates.

in quo alligatum] S. T., Classen, Baiter. The reading 'in quo inter alligatos' cannot be explained. The name of Oppianicus was involved, implicated (alligatum) in this affair, literally 'held fast.' Classen compares c. 54: "ubi enim (lex) omnes mortales alligat;" and Pro Rabir. Post. c. 6: "ne qua nova quaestione alligaretur," and c. 7.

14. *pharmacopolam*] A travelling doctor who visited the different towns, made a circuit of them, and sold his physic. He had not much time to spare at Larinum, for he was in a hurry ('qui properaret'), and had many places to visit. He did the job quick and was off. Horace (Sat. i. 1. v. 1) enumerates 'pharmacopolae' among others of a like kind. (Note in Macleane's Horace.)

testamentum faciente,] This must mean, as Manutius says, at the time when she made her will. Oppianicus had been her son-in-law. He was not now, for Dinaea's daughter was dead (Pro P. Quintio, c. 6). Manutius says, "when he had got hold of the will by stealth." He had got hold of it, and it was in his possession when Dinaea died, as appears from what follows: and no objection is made to the fact of the will being in his possession, but he is charged

cus, qui gener ejus fuisset, digito legata delevit; et quum id multis locis fecisset, post mortem ejus ne lituris coargui posset, testamentum in alias tabulas transcriptum signis adulterinis obsignavit. Multa praetereo consulto; etenim vereor ne haec ipsa nimium multa esse videantur. Vos tamen eum similem sui fuisse in ceteris quoque vitae partibus existimare debetis. Illum tabulas publicas Larini censorias corrupisse decuriones universi judicaverunt. Cum illo nemo jam rationem, nemo rem ullam contrahebat; nemo illum ex tam multis cognatis et affinibus tutorem unquam liberis suis scripsit; nemo illum aditu, nemo congressione, nemo sermone, nemo convivio dignum judicavit; omnes aspernabantur, omnes abhorrebant, omnes ut aliquam immanem ac perniciosam bestiam pestemque fugiebant. Hunc tamen hominem tam audacem, tam nefarium, tam nocentem numquam accusasset Habitus, judices, si id praetermittere salvo capite suo potuisset. Erat huic inimicus Oppianicus, erat; sed tamen erat vitricus: crudelis et huic infesta mater; attamen mater. Postremo nihil tam remotum ab accusatione quam Cluentius, et natura et voluntate et instituta ratione vitae. Sed quum esset haec illi proposita conditio, ut aut juste pieque accusaret aut acerbe indigneque moreretur, accusare quoquo modo posset quam illo modo emori maluit.

Atque ut hoc ita esse perspicere possitis, exponam vobis Oppianici facinus manifesto compertum atque deprehensum; ex quo simul utrumque, et huic accusare et illi condemnari necesse fuisse intelligetis. XV. Martiales quidam Larini appellabantur, ministri publici Martis, atque ei deo veteribus institutis religionibusque Larinatium consecrati; quorum quum satis magnus numerus esset, quumque item, ut in Sicilia permulti Veneri sunt, sic illi Larini in Martis familia numerarentur, repente Oppianicus, eos omnes liberos

with having made a new will, in order that the erasures in the old will might not be evidence of his knavery. As young Oppianicus was made 'heres' by the will, there is nothing strange in the will being in his father's possession. I think then we may translate the text thus: "At the time when your grandmother Dinaea made her will, and Oppianicus had got possession of it, for he had been her son-in-law, he rubbed out the legacies with his finger, in order that his son might have none to pay." The will was probably written on a waxen tablet.

tabulas publicas] 'Public records,' which he falsified. Cicero adds 'censorias,' the 'tabulae' of the censors of the Municipium.—'illi condemnari:' S. T. The accusative 'illum' is also Latin; but, as Classen observes, the opposition to 'huic' makes us feel the want of another dative, and the best MSS. have it.

15. *Martiales—Veneri*] They were probably slaves, like the Venerii in Sicily (Vol. I. Divin. c. 17; ii. 2. c. 38). I have followed S. T. and Classen in writing Veneri the dative, which is right. The other form is the adjective Venerii or Venerei, as some of the MSS. have it, and Baiter, who has Venerii.

esse civesque Romanos coepit defendere. Graviter id decuriones Larinatium cunctique municipes tulerunt. Itaque ab Habito petiverunt ut eam caussam susciperet publiceque defenderet. Habitus quum se ab omni ejusmodi negotio removisset, tamen pro loco, pro antiquitate generis sui, pro eo quod se non suis solum commodis sed etiam suorum municipum ceterorumque necessariorum natum esse arbitrabatur, tantae voluntati universorum Larinatium deesse noluit. Suscepta caussa Romamque delata, magnae quotidie contentiones inter Habitum et Oppianicum ex utriusque studio defensiones excitabantur. Erat ipse immani acerbaque natura Oppianicus. Incendebat ejus amentiam infesta atque inimica filio mater Habiti. Magni autem illi sua interesse arbitrabantur, hunc a caussa Martialium removeri. Suberat etiam alia caussa major, quae Oppianici hominis avarissimi atque audacissimi mentem maxime commovebat. Nam Habitus usque ad illius judicii tempus nullum testamentum umquam fecerat. Neque enim legare ejusmodi matri poterat animum inducere, neque testamento nomen omnino praetermittere parentis. Id quum Oppianicus sciret, neque enim erat obscurum, intelligebat Habito mortuo bona ejus omnia ad matrem esse ventura; quae ab sese postea aucta pecunia majore praemio, orbata filio minore periculo necaretur. Itaque his rebus incensus qua ratione Habitum veneno tollere conatus sit cognoscite. XVI. C. et L. Fabricii fratres gemini fuerunt ex municipio Aletrinati, homines inter se quum forma tum moribus similes, municipum autem suorum dissimillimi; in quibus quantus splendor sit, quam prope aequabilis, quam fere omnium constans et moderata ratio vitae, nemo vestrum, ut mea fert opinio, ignorat. His Fabriciis semper est usus Oppianicus familiarissime. Jam hoc fere scitis omnes quantam vim habeat ad conjungendas amicitias studiorum ac naturae similitudo. Quum illi ita viverent ut nullum quaestum turpem esse arbitrarentur; quum omnis ab his fraus, omnes insidiae circumscriptionesque adolescentium nascerentur, quumque essent vitiis atque improbitate omnibus noti, studiose, ut dixi, ad eorum se familiaritatem multis jam ante annis Oppianicus applicarat. Itaque tum sic statuit, per C. Fabricium, nam L. erat mortuus, insidias Habito comparare. Erat illo tempore infirma valetudine Habitus. Utebatur autem medico ignobili sed spectato homine,

praetermittere] Or he could have said 'praeterire.' See Pro P. Quintio, c. 4, note.

16. *Aletrinati,*] Aletrium or Alatrium (Alatri) was a town of the Hernici, near Ferentinum.

ignobili] A man of no note or mark, but a man of good character. See 'ignobilem,' Pro Caecina, c. 4.

Cleophanto; cujus servum Diogenem Fabricius ad venenum Habito dandum spe et pretio sollicitare coepit. Servus non incallidus et, ut res ipsa declaravit, frugi atque integer sermonem Fabricii non est aspernatus: rem ad dominum detulit: Cleophantus autem cum Habito est collocutus. Habitus statim cum M. Baebio senatore familiarissimo suo communicavit; qui qua fide, qua prudentia, qua diligentia fuerit, meminisse vos arbitror. Ei placuit ut Diogenem Habitus emeret a Cleophanto, quo facilius aut comprehenderetur res ejus indicio, aut falsa esse cognosceretur. Ne multa; Diogenes emitur: venenum diebus paucis comparatur: multi viri boni quum ex occulto intervenissent, pecunia obsignata quae ob eam rem dabatur, in manibus Scamandri, liberti Fabriciorum, deprehenditur. Pro dii immortales! Oppianicum quisquam his rebus cognitis circumventum esse dicet? XVII. Quis umquam audacior, quis nocentior, quis apertior in judicium adductus est? Quod ingenium, quae facultas dicendi, quae a quoquam excogitata defensio huic uni crimini potuit obsistere? Simul et illud quis est qui dubitet quin, hac re comperta manifestoque deprehensa, aut obeunda mors Cluentio aut suscipienda accusatio fuerit?

Satis esse arbitror demonstratum, judices, his criminibus accusatum esse Oppianicum ut honeste absolvi nullo modo potuerit. Cognoscite nunc ita reum citatum esse illum ut, re semel atque iterum praejudicata, condemnatus in judicium venerit. Nam Cluentius, judices, primum nomen ejus detulit cujus in manibus venenum deprehenderat. Is erat libertus Fabriciorum, Scamander. Integrum consilium, judicii corrupti nulla suspicio: simplex in judicium caussa, certa res, unum crimen allatum est. Hic tum Fabricius, is de quo ante dixi, qui liberto damnato sibi illud impendere periculum videret, quod mihi cum Aletrinatibus vicinitatem, et cum plerisque eorum magnum usum esse sciebat, frequentes eos ad me domum adduxit. Qui quamquam de homine, sicut necesse erat, existimabant, tamen, quod erat ex eodem municipio, suae dignitatis esse arbitrabantur, eum quibus rebus possent defendere; idque a me ut facerem et ut caussam Scamandri susciperem petebant: in qua caussa patroni omne periculum continebatur. Ego qui neque illis talibus viris ac tam amantibus mei rem possem ullam

intervenissent,] As Scamander was going to give the money and take the poison, he was seized by the 'multi viri boni,' who were lying in wait to detect him.

17. *his criminibus*] Classen and Baiter have 'iis.' 'His' is the reading of S. T. F. It is true that the authority of the MSS. will not decide between two words which are so often confounded.—'Integrum consilium:' the body of 'judices' was honest.—'vicinitatem:' Cicero's native place Arpinum was not far from Aletrium.

negare, neque illud crimen tantum ac tam manifestum esse arbitrarer, sicut ne illi ipsi quidem, qui mihi tum illam caussam commendabant, arbitrabantur, pollicitus iis sum me omnia quae vellent esse facturum.

XVIII. Res agi coepta est: citatus est Scamander reus. Accusabat P. Cannutius, homo in primis ingeniosus et in dicendo exercitatus: accusabat autem ille quidem Scamandrum verbis tribus, VENENUM ESSE DEPREHENSUM: omnia tela totius accusationis in Oppianicum conjiciebantur; aperiebatur caussa insidiarum: Fabriciorum familiaritas commemorabatur; hominis vita et audacia proferebatur: denique omnis accusatio varie graviterque tractata ad extremum manifesta veneni deprehensione conclusa est. Hic ego tum ad respondendum surrexi: qua cura, Dii immortales! qua sollicitudine animi, quo timore. Semper equidem magno cum metu incipio dicere: quotiescumque dico, toties mihi videor in judicium venire non ingenii solum sed etiam virtutis atque officii; ne aut id profiteri videar quod non possim implere, quod est impudentiae; aut id non efficere quod possim, quod est aut perfidiae aut negligentiae. Tum vero ita sum perturbatus ut omnia timerem; si nihil dixissem, ne infantissimus; si multa in ejusmodi caussa dixissem ne impudentissimus existimarer. XIX. Collegi me aliquando, et ita constitui, fortiter esse agendum; illi aetati qua tum eram solere laudi dari, etiam si in minus firmis caussis hominum periculis non defuissem. Itaque feci: sic pugnavi, sic omni ratione contendi, sic ad omnia confugi, quantum ego assequi potui, remedia ac perfugia caussarum, ut hoc, quod timide dicam, consecutus sim, ne quis illi caussae patronum defuisse arbitraretur. Sed ut quidquid

18. *Semper equidem*] This is the great orator's confession of himself. He always rose to speak with a feeling of fear, as every man of merit must do for the reasons which Cicero gives. He who rises to address a great audience without the feeling which Cicero describes, wants something to make him what he wishes to be. And Cicero (De Or. i. 26) will tell him what it is: "ut enim quisque optime dicit, ita maxime dicendi difficultatem variosque eventus orationis expectationemque hominum pertimescit." Cicero makes L. Crassus say this, who adds: "Equidem et in vobis animadvertere soleo et meipso saepissime experior ut exalbescam in principiis dicendi et tota mente atque artubus contremiscam." Homer has represented Ulysses as looking on the ground, when he rose to speak, using no gesture. One would have taken him for a man of no ability, for a sullen man, a stupid fellow.

ἀλλ' ὅτε δὴ ῥ' ὄπα τε μεγάλην ἐκ στήθεος ἵει
καὶ ἔπεα νιφάδεσσιν ἐοικότα χειμερίῃσιν,
οὐκ ἂν ἔπειτ' Ὀδυσῆΐ γ' ἐρίσσειε βροτὸς ἄλλος.

(Il. iii. 221.)

19. *illi aetati*] This cause seems to have been tried about B.C 74, four years before he prosecuted Verres.—'quod timide dicam:' he means, as Classen says, to excuse himself for having done so much in a bad case.

quidquid] Baiter has altered this to 'quidque.' Classen has 'quidquid,' the MSS. reading. Lambinus says that 'quid-

ego apprehenderam, statim accusator extorquebat e manibus. Si quaesieram quae inimicitiae Scamandro cum Habito, fatebatur nullas fuisse, sed Oppianicum, cujus ille minister fuisset, huic inimicissimum fuisse atque esse dicebat. Sin autem illud egeram, nullum ad Scamandrum morte Habiti venturum emolumentum fuisse; concedebat, sed ad uxorem Oppianici, hominis in uxoribus necandis exercitati, omnia bona Habiti ventura fuisse dicebat. Quum illa defensione usus essem, quae in libertinorum caussis honestissima semper existimata est, Scamandrum patrono esse probatum, fatebatur, sed quaerebat cui probatus esset ipse patronus. Quum ego pluribus verbis in eo commoratus essem, Scamandro insidias factas esse per Diogenem, constitutumque inter eos alia de re fuisse, ut medicamentum, non venenum Diogenes afferret, hoc cuivis usu venire posse; quaerebat cur in ejusmodi locum, tam abditum, cur solus, cur cum obsignata pecunia venisset. Denique hoc loco caussa testibus, honestissimis hominibus, premebatur. M. Baebius de suo consilio Diogenem emptum, se praesente Scamandrum cum veneno pecuniaque deprehensum esse dicebat. P. Quintilius Varus, homo summa religione et summa auctoritate praeditus, de insidiis quae fierent Habito, et de sollicitatione Diogenis recenti re secum Cleophantum locutum esse dicebat. Atque in illo judicio quum Scamandrum nos defendere videremur, verbo ille reus erat, re quidem vera et periculo tota accusatione Oppianicus. Neque id obscure ferebat nec dissimulare ullo modo poterat; aderat frequens, advocabat, omni studio gratiaque pugnabat: postremo, id quod maximo malo illi caussae fuit, hoc ipso in loco, quasi reus ipse esset, sedebat. Oculi omnium judicum non in Scamandrum sed in Oppianicum conjiciebantur: timor ejus, perturbatio, suspensus incertusque vultus, crebra coloris mutatio, quae erant antea suspiciosa, haec aperta ac manifesta faciebant. LXX. Quum in consilium iri oporteret, quaesivit ab reo C. Junius quaesitor ex lege illa Cornelia, quae tum erat, clam an palam de se sententiam ferri

quid' is often put for 'quidque,' which is not a good kind of explanation. But it is true that 'quidquid,' which is 'quid' repeated, is properly used here.

hoc loco] In this part of the case he was hard pressed by the witnesses, men of the best character.—'accusatione:' the common reading is 'et accusatione,' but S. T. omit the 'et;' and so the opposition is between 'verbo' and 're vera et periculo,' and 'tota accusatione' refers to both members of the sentence (Classen).

20. *in consilium iri*] "When it was time for the 'judices' to deliberate, to come to the vote."

quaesitor] C. Junius was the judge; he presided at the trial. (Vol. I. Act. i. c. 9, 10, note.) Klotz observes that it is of course understood that 'quaesivit' is to be connected with 'ex lege Cornelia.' The remark of Cicero shows that this Lex, or this part of it which gave the accused the power of having the votes taken secretly, or openly, had been repealed.

vellet. De Oppianici sententia responsum est, quod is Habiti familiarem Junium esse dicebat, clam velle ferri. Itum est in consilium. Omnibus sententiis praeter unam, quam suam Staienus esse dicebat, Scamander prima actione condemnatus est. Quis tum erat omnium qui Scamandro condemnato non judicium de Oppianico factum esse arbitraretur? quid est illa damnatione judicatum, nisi venenum id quod Habito daretur esse quaesitum? Quae porro tenuissima suspicio collata in Scamandrum est aut conferri potuit, ut is sua sponte necare voluisse Habitum putaretur?

Atque hoc tum judicio facto, et Oppianico, re et existimatione jam, lege et pronuntiatione nondum condemnato, tamen Habitus Oppianicum reum statim non fecit. Voluit cognoscere utrum judices in eos solos essent severi, quos venenum habuisse ipsos comperissent, an etiam consilia conscientiasque ejusmodi facinorum supplicio dignas judicarent. Itaque C. Fabricium, quem propter familiaritatem Oppianici conscium illi facinori fuisse arbitrabatur, reum statim fecit, utique ei locus primus constitueretur propter caussae conjunctionem impetravit. Hic tum Fabricius non modo ad me meos vicinos et amicos Aletrinates non adduxit, sed ipse iis neque defensoribus uti postea neque laudatoribus potuit. Rem enim integram hominis non alieni quamvis suspiciosam defendere humanitatis esse putabamus; judicatam labefactare conari impudentiae. Itaque tum ille inopia et necessitate coactus in caussa ejusmodi ad Cepasios fratres confugit, homines industrios atque eo animo ut, quaecumque dicendi potestas esset data, in honore atque in beneficio ponerent. XXI. Jam hoc prope iniquissime compa-

ei locus] 'ejus locus,' F., Klotz; but 'ei' appears to be what the sense requires. Fabricius, as the 'patronus' of Scamander, was more closely connected with the act than Oppianicus, whose plot remained to be proved.—'laudatoribus:' see Vol. I. Verr. ii. 5. c. 22.

21. *Jam hoc prope*] The reading of S. T. F. M. Classen and Baiter have properly ejected 'quoque,' which in some editions is placed after 'hoc;' for the orator is not adding something to what he has said 'in honore,' &c.; but he is introducing something new, 'jam hoc prope.' He is of course speaking ironically, when he is comparing the case of a sick man and of a criminal; when he says that, in the worst complaint, we look for the best doctor, in the worst criminal case we employ the worst advocate. He somewhat qualifies the irony of 'iniquissime' by the word 'prope:' it is not absolutely 'most inconsistent, most unreasonable,' but it is 'nearly so.' If he had said no more, still we could not doubt about his meaning. We should conclude that he was speaking ironically. But the addition 'nisi forte—praestare debent,' clears up all doubt, if there was any; and besides that, it completes his attack on the brothers Cepasii, who were ready to undertake any thing. When he says 'nisi forte,' the orator again uses his art and shows his love of irony and sarcasm, as if every body did not know that the doctor's business is only to heal the sick, without doing harm to any body else, while the advocate's business is to defend the accused, but not so as to injure the innocent or to save from punishment the man who is really guilty of a crime. Ac-

ratum est, quod in morbis corporis, ut quisque est difficillimus, ita medicus nobilissimus atque optimus quaeritur; in periculis capitis, ut quaeque caussa difficillima est, ita deterrimus obscurissimusque patronus adhibetur; nisi forte hoc caussae est, quod medici nihil praeter artificium, oratores etiam auctoritatem praestare debent. Citatur reus, [agitur caussa,] paucis verbis accusat ut de re judicata Cannutius. Incipit longo et alte petito prooemio respondere major Cepasius. Primo attente auditur ejus oratio. Erigebat animum jam demissum et oppressum Oppianicus. Gaudebat ipse Fabricius. Non intelligebat animos judicum non illius eloquentia sed defensionis impudentia commoveri. Posteaquam de re coepit dicere, ad ea quae erant in caussa addebat etiam ipse nova quaedam vulnera, ut, quamquam sedulo faciebat, tamen interdum non defendere sed praevaricari accusationi videretur. Itaque quum callidissime se dicere putaret, et quum illa verba gravissima ex intimo artificio deprompsisset: Respicite, judices, hominum fortunas, respicite dubios variosque casus, respicite C. Fabricii senectutem: quum hoc, Respicite, ornandae orationis caussa saepe dixisset, respexit ipse. At C. Fabricius a subselliis demisso capite discesserat. Hic judices ridere: stomachari atque acerbe ferre patronus caus-

cordingly the physician only applies his art: the advocate by defending the accused declares his opinion of his innocence, or at least his doubt about the evidence being sufficient to convict, and thus he gives to the case of the accused the authority and the credit of his own name. There is no doubt about the truth of Cicero's principles. The duty of the advocate is only to defend the man whom he believes to be innocent, or the man whose guilt, even if it is probable, is not established by sufficient evidence. When the guilt is clear, when the proof is conclusive, the advocate who makes a defence is both a knave and a fool. Accordingly Cicero and all honest Roman advocates had always to consider whether they could honourably defend a case, for in a bad case the advocate's character is at stake as well as the life or interests of the accused (c. 39).

Cicero has not forgotten these two vulgar fellows in another place: "Eodem tempore C. et L. Caepasii fratres fuerunt, qui multa opera, ignoti homines et repentini, quaestores celeriter facti sunt, oppidano quodam et incondito genere dicendi." (Brutus, c. 69. ed. Meyer.)

agitur caussa,] These words are omitted in S. They are not wanted. Indeed they spoil the text; and it is probable that they are not genuine.

nova quaedam vulnera,] He did some fresh damage to his client's case, as a foolish advocate often does; and though he did his work in all sincerity, and with all diligence, he knew so little what he was doing that it looked as if he was betraying his case and helping the other side. The legal meaning of 'praevaricatio' is fixed by Ulpian (Dig. 47. Tit. 15, de Praevaricatione): "Praevaricator est quasi varicator, qui diversam partem adjuvat prodita caussa sua." It is said that 'praevaricari' never occurs in Cicero with a dative; and accordingly Lambinus and others have doubted about the reading 'accusationi,' which Baiter writes thus [accusationi].

The advocate did mischief to his cause without intending it. The worst enemy that a man has is an unwise friend or foolish partisan. Antonius (Cicero, De Or. ii. 72) says: "Alterum est illud, quod ego oratori maxime cavendum et providendum puto, quodque me sollicitare solet: Non tam ut prosim caussis elaborare soleo, quam ut nequid obsim: non quin enitendum sit in utroque, sed tamen multo est turpius oratori nocuisse videri caussae quam non profuisse."

sam sibi eripi, et se cetera de illo loco, Respicite judices, non posse dicere: nec quidquam propius est factum quam ut illum persequeretur et collo obtorto ad subsellia reduceret, ut reliqua posset perorare. Ita tum Fabricius, primum suo judicio, quod est gravissimum, deinde legis vi et sententiis judicum est condemnatus.

XXII. Quid est quod jam de Oppianici persona caussaque plura dicamus? Apud eosdem judices reus est factus, quum his duobus praejudiciis jam damnatus esset: ab iisdem autem judicibus, qui Fabriciorum damnatione de Oppianico judicarant, locus ei primus est constitutus: accusatus est criminibus gravissimis, et iis quae a me breviter dicta sunt, et praeterea multis quae ego omnia nunc omitto: accusatus est apud eos qui Scamandrum, ministrum Oppianici, C. Fabricium, conscium maleficii, condemnarant. Utrum, per deos immortales! magis est mirandum quod is condemnatus est, an quod omnino respondere ausus est? Quid enim illi judices facere potuerunt? qui si innocentes Fabricios condemnassent, tamen in Oppianico sibi constare et superioribus consentire judiciis debuerunt. An vero illi sua per se ipsi judicia rescinderent, quum ceteri soleant in judicando ne ab aliorum judiciis discrepent providere? et ii, qui Fabricii libertum, quia minister in maleficio fuerat, patronum, quia conscius, condemnassent, ipsum principem atque architectum sceleris absolverent? et qui ceteros, nullo praejudicio facto, tamen ex ipsa caussa condemnassent, hunc, quem bis jam condemnatum acceperant, liberarent? Tum vero illa judicia senatoria, non falsa invidia, sed vera atque insigni turpitudine notata, atque operta dedecore et infamia, defensioni locum nullum reliquissent. Quid enim tandem illi judices responderent, si quis ab iis quaereret? Condemnastis Scamandrum: quo crimine? Nempe quod Habitum per servum medici veneno necare voluisset. Quid Habiti morte Scamander consequebatur? Nihil, sed administer erat Oppianici. Et condemnastis C. Fabricium: quid ita? Quia, quum ipse familiarissime Oppianico usus, libertus autem ejus in maleficio deprehensus esset, illum expertem ejus consilii fuisse non probabatur. Si igitur ipsum Oppianicum bis suis judiciis

22. *his duobus*] S. T. F. M. Some of the editions have 'is,' a blunder so manifest that it is a wonder any editor should have allowed it to stand.

judicia senatoria,] The 'judices' at the time of the trial of Oppianicus were taken from the Senators. Cicero is not speaking against the integrity of the Senatorial 'judices,' for that would have been speaking against the order to which he now belonged. He admits that these 'judices' had a bad character, but he does not admit that they deserved it (non falsa invidia, &c.) But, he asks, if they had acquitted Oppianicus, would they not have left themselves without an answer?

condemnatum absolvissent, quis tantam turpitudinem judiciorum, quis tantam inconstantiam rerum judicatarum, quis tantam libidinem judicum ferre potuisset?

Quod si hoc videtis, quod jam hac omni oratione patefactum est, illo judicio reum condemnari, praesertim ab iisdem judicibus qui duo praejudicia fecissent, necesse fuisse, simul illud videatis necesse est, nullam accusatori esse caussam potuisse cur judicium vellet corrumpere. XXIII. Quaero enim abs te, T. Atti, relictis jam ceteris argumentis omnibus, num Fabricios quoque innocentes condemnatos existimes, num etiam illa judicia pecunia corrupta esse dicas, quibus in judiciis alter a Staieno solo absolutus est, alter etiam ipse se condemnavit. Age, si nocentes: cujus maleficii? numquid praeter venenum quaesitum quo Habitus necaretur objectum est? numquid aliud in illis judiciis versatum est praeter hasce insidias Habito ab Oppianico per Fabricium factas? Nihil, nihil, inquam, aliud, judices, reperietis. Exstat memoria: sunt tabulae publicae: redargue me, si mentior: testium dicta recita: doce in illorum judiciis quid praeter hoc venenum Oppianici non modo in criminis sed in maledicti loco sit objectum. Multa dici possunt quare ita necesse fuerit judicari, sed ego occurram exspectationi vestrae, judices. Nam etsi a vobis sic audior, ut numquam benignius neque attentius quemquam auditum putem, tamen vocat me alio jamdudum tacita vestra exspectatio, quae mihi obloqui videtur. Quid ergo? negasne illud judicium corruptum esse? Non nego, sed ab hoc corruptum non esse confirmo. A quo igitur est corruptum? Opinor, primum, si incertum fuisset, quisnam exitus illius judicii futurus esset, verisimilius tamen esset, eum potius corrupisse qui metuisset ne ipse condemnaretur, quam illum qui veritus esset ne alter absolveretur; deinde, quum esset nemini dubium quid judicari necesse esset, eum certe potius qui sibi alia ratione diffideret quam eum qui omni ratione confideret; postremo, certe potius illum qui bis apud eos judices offendisset, quam eum

23. *Atti*] Or *Acci*. The MSS. continually vary in such forms. Accius may be the better form, but the evidence of one stone with the inscription "T. Accii Pisaur. cineres" is not decisive. Cicero (Brutus, c. 78) says of T. Attius: "T. Attium Pisaurensem cujus accusationi respondi pro Cluentio, qui et accurate dicebat et satis copiose."

per Fabricium] This is perhaps a better reading than Fabricios, because C. Fabricius alone is meant. When he says 'Fabricios quoque innocentes,' he means C. Fabricius, the 'patronus,' and his freedman Scamander, who would also have the name Fabricius.

memoria:] 'memoriae,' F. M. A. Classen says that 'memoriae' in the plural is not used in the sense of records, or written documents till the time of Gellius (iv. 6; x. 12).

alia ratione] S. T. F. A. Classen, Baiter. The other reading is 'aliqua;' and

qui bis caussam iis probavisset. Unum quidem certe nemo erit tam inimicus Cluentio qui mihi non concedat, si constet corruptum illud esse judicium, aut ab Habito aut ab Oppianico esse corruptum. Si doceo non ab Habito, vinco ab Oppianico: si ostendo ab Oppianico, purgo Habitum. Quare etsi satis docui rationem nullam huic corrumpendi judicii fuisse, ex quo intelligitur ab Oppianico esse corruptum, tamen de illo ipso separatim cognoscite. XXIV. Atque ego illa non argumentabor quae sunt gravia vehementer; eum corrupisse qui in periculo fuerit; eum qui metuerit; eum qui spem salutis in alia ratione non habuerit; eum qui semper singulari fuerit audacia. Multa sunt ejusmodi. Verum quum habeam rem non dubiam sed apertam atque manifestam, enumeratio singulorum argumentorum non est necessaria. Dico C. Aelio Staieno judici pecuniam grandem Statium Albium ad corrumpendum judicium dedisse. Num quis negat? Te, Oppianice, appello; te, Atti; quorum alter eloquentia damnationem illam, alter tacita pietate deplorat. Audete negare ab Oppianico Staieno judici pecuniam datam: negate, inquam, in eo loco. Quid tacetis? An negare non potestis, quod repetistis, quod confessi estis, quod abstulistis? Quo tandem igitur ore mentionem corrupti judicii facitis, quum ab ista parte judici pecuniam ante judicium datam, post judicium ereptam esse

I am not sure which is the true reading. The opposition between 'aliqua ratione diffideret' and 'omni ratione confideret' is clear; nor is it any objection to 'aliqua,' as Classen supposes, that even an innocent man might be said 'aliqua ratione diffidere.' But Cicero does not say this, if 'aliqua' is the true reading, of an innocent man, of whom it could only be said under particular circumstances, but he says it of a man whom he assumes to be guilty, and who would have a motive for bribing the 'judices,' if he had reason in any way ('aliqua ratione') to fear about the verdict. If 'alia ratione' is right, it means otherwise than by corruption.

Classen maintains that 'alia ratione' in this chapter is confirmed by 'alia ratione' in the next, which is a mistake, I think. He could not say any thing else than 'alia ratione' in the next chapter; and he certainly could say 'aliqua ratione' in this chapter, according to Classen's own admission. For if 'aliqua ratione' could be said of an innocent man, of course it could be said of a guilty man.

inimicus] S. T., the best MSS. of Quintilian (Inst. v. 10), who quotes this passage, and Rufinianus. The other reading is 'iniquus.'—'vinco:' 'I prove,' as in Pro Caecina, c. 21.

24. *tacita pietate*] Out of respect to his father, which stops his mouth.—'in eo loco:' 'meo loco,' S. T. F. Baiter. The difference between *in* and *m* is so small that the evidence even of the best MSS. cannot determine our choice. The other MSS. have 'in eo loco,' and Classen has done right in keeping 'in eo loco,' which Manutius correctly explains to mean "the benches of the prosecutors, whence they had not the right to interrupt the defence." Cicero accordingly gives them permission to speak from their seats. Manutius compares the passage in Pro Rosc. Amer. c. 27: "sic tecum agam ut in eo loco vel respondendi vel interpellandi tibi potestatem faciam."

quod abstulistis.] He has said 'quod repetistis,' 'what you claimed back:' he adds "what you have admitted, what you have carried off (abstulistis)." See Vol. I. Verr. ii. 4. c. 14: "Ita Pamphilus scyphos optimos aufert," and Pro Q. Roscio Com. c. 11; Pro P. Quintio, c. 5.

fateamini? Quonam igitur haec modo gesta sunt? Repetam paullo altius, judices, et omnia quae in diuturna obscuritate latuerunt, sic aperiam ut ea cernere oculis videamini. Vos quaeso, ut adhuc me attente audistis, item quae reliqua sunt audiatis. Profecto nihil a me dicetur quod non dignum hoc conventu et silentio, dignum vestris studiis atque auribus esse videatur.

Nam ut primum Oppianicus ex eo quod Scamander reus erat factus, quid sibi impenderet coepit suspicari, statim se ad hominis egentis, audacis, in judiciis corrumpendis exercitati, tum autem judicis, Staieni familiaritatem applicavit. Ac primum Scamandro reo tantum datis muneribus perfecerat ut eo fautore uteretur cupidiore quam fides judicis postulabat. Post autem quum esset Scamander unius Staieni sententia absolutus, patronus autem Scamandri ne sua quidem sententia liberatus, acrioribus saluti suae remediis subveniendum putavit. Tum ab Staieno, sicut ab homine ad excogitandum acutissimo, ad audendum impudentissimo, ad efficiendum acerrimo—haec enim ille et aliqua ex parte habebat, et majore ex parte se habere simulabat—auxilium capiti et fortunis suis petere coepit. XXV. Jam hoc non ignoratis, judices, ut etiam bestiae fame monitae plerumque ad eum locum ubi pastae sint aliquando revertantur. Staienus ille biennio ante, quum caussam bonorum Safinii Atellae recepisset, sexcentis millibus nummûm se judicium corrupturum esse dixerat; quae quum accepisset a pupillo, suppressit, judicioque facto nec Safinio nec bonorum emptoribus reddidit. Quam quum pecuniam profudisset, et sibi nihil non modo ad cupiditates suas sed ne ad necessitatem quidem reliquisset, statuit ad easdem esse sibi praedas ac suppressiones judiciales revertendum. Itaque quum Oppianicum jam perditum et duobus jugulatum praejudiciis videret, promissis suis eum excitavit abjectum et simul saluti desperare vetuit. Oppianicus autem orare hominem coepit ut sibi rationem ostenderet judicii corrumpendi. Ille autem, quemadmodum ex ipso Oppianico postea est auditum, negavit quemquam esse in civitate praeter se qui id efficere possit.

datis muneribus] S. T. Classen. The common reading is 'donis datis muneribusque.'—'fautore:' Lambinus was in favour of this reading of the Cod. S. Vict., but he was not listened to. 'Fautore' is the reading of S. T., and the true reading. 'Auctore' is without any meaning here.

25. *caussam bonorum*] Safinius Atella, as Manutius explains it, attempted to recover his property from those to whom it had been sold; and to secure a verdict, he employed Staienus to bribe the 'judices.' Staienus kept ('suppressit') the money. He did not pay it back either to Atella, whose money it was, nor to the 'bonorum emptores,' whose money it was not. He kept it.

qui id efficere possit.] This appears to be the reading of all the MSS. save one; and though, as Classen observes, 'possit'

Sed primo gravari coepit, quod aedilitatem se petere cum hominibus nobilissimis et invidiam atque offensionem timere dicebat. Post exoratus initio permagnam pecuniam poposcit: deinde ad id pervenit quod confici potuit; sestertiûm sexcenta quadraginta millia deferri ad se domum jussit. Quae pecunia simul atque ad eum delata est, homo impurissimus statim coepit in ejusmodi mente et cogitatione versari: nihil esse suis rationibus utilius quam Oppianicum condemnari; illo absoluto, pecuniam illam aut judicibus dispertiendam aut ipsi esse reddendam; damnato, repetiturum esse neminem. Itaque rem excogitat singularem. Atque haec, judices, quae vera dicuntur a nobis, facilius credetis, si cum animis vestris longo intervallo recordari C. Staieni vitam et naturam volueritis. Nam perinde ut opinio est de cujusque moribus, ita quid ab eo factum aut non factum sit existimari potest. XXVI. Quum esset egens, sumptuosus, audax, callidus, perfidiosus, et quum domi suae, miserrimis in locis et inanissimis, tantum nummorum positum videret, ad omnem malitiam et fraudem versare mentem suam coepit: Ego dem judicibus? mihi ipsi igitur praeter periculum et infamiam quid quaeretur? Nihil excogitem, quamobrem Oppianicum damnari necesse sit? quid tandem? nihil enim est quod fieri non possit. Si quis eum forte casus ex periculo eripuerit, nonne reddendum est? Praecipitantem igitur impellamus, inquit, et perditum prosternamus. Capit hoc consilii, ut pecuniam quibusdam judicibus levissimis polliceatur, deinde eam postea supprimat; ut, quoniam graves homines sua sponte severe judicaturos putabat, eos qui leviores erant destitutione iratos Oppianico redderet. Itaque, ut erat semper praeposterus atque perversus, initium facit a Bulbo, et eum, quod jamdiu nihil quaesierat, tristem atque oscitantem leviter impellit. Quid tu, inquit, ecquid me adjuvas, Bulbe, ne gratis rei publicae serviamus? Ille vero simul atque hoc audivit Ne gratis: Quo voles, inquit, sequar: sed quid affers? Tum ei quadraginta millia, si esset absolutus Oppianicus, pollicetur, et eum ut ceteros appellet quibuscum loqui consuesset rogat, atque etiam ipse conditor totius negotii Guttam aspergit huic Bulbo. Itaque minime amarus iis visus est,

does not fit the grammarians' rules, it may be right.—'quod confici potuit:' 'what could be made up.' He wanted a great deal, but wisely took what he could get. Terence, Phormio, i. 1. 3, says

"—— pauxillulum
Nummorum, id ut conficerem. Confeci: adfero."

26. *Ego dem*] T., Classen, Baiter. The common reading is 'demne.'

Guttam aspergit] Cicero is fond of playing on names, and, as Klotz observes, 'conditor' may have the double sense, as Cicero means it, of 'condĭtor' and 'condītor.' He follows this up by a play on the names of Gutta and Bulbus—where Gutta reminds

qui aliquid ex ejus sermone speculae degustarant. Unus et alter dies intercesserat, quum res parum certa videbatur: sequester et confirmator pecuniae desiderabatur. Tum appellat hilaro vultu hominem Bulbus, ut placidissime potest: Quid tu, inquit, Paete?—hoc enim sibi Staienus cognomen ex imaginibus Aeliorum delegerat, ne, si se Ligurem fecisset, nationis magis quam generis uti cognomine videretur—qua de re mecum locutus es, quaerunt a me ubi sit pecunia. Hic ille planus improbissimus, quaestu judiciario pastus, qui illi pecuniae quam condiderat spe jam atque animo incubaret, contrahit frontem—recordamini faciem atque illos ejus fictos simulatosque vultus—queritur se ab Oppianico destitutum; et qui esset totus ex fraude et mendacio factus, quique ea vitia quae a natura habebat etiam studio atque artificio quodam malitiae condivisset, pulchre asseverat sese ab Oppianico destitutum: atque hoc addit testimonii, sua illum sententia, quum palam omnes laturi essent, condemnatum iri.

XXVII. Manarat sermo in consilio, pecuniae quandam mentionem inter judices esse versatam. Res neque tam fuerat occulta quam erat occultanda, neque tam erat aperta quam rei publicae caussa aperienda. In ea obscuritate ac dubitatione omnium Cannutio, perito homini, qui quodam odore suspicionis Staienum corruptum esse sensisset nequedum rem perfectam arbitraretur, placuit repente pronuntiari: Dixerunt. Hic tum Oppianicus non magno opere pertimuit; rem a Staieno perfectam esse arbitrabatur.

us of 'gutta,' and Bulbus reminds us of 'bulbus' (an onion). Accordingly he afterwards uses the word 'degustarant,' to express the tasting of the onion and the oil. He says, "Accordingly Bulbus (being so seasoned) seemed by no means bitter to those who from his talk had got a taste of some little hope." 'Speculae' is the reading of S. T.; but the common reading of the MSS. is 'spe gulae;' and, as Klotz observes, the play on the word 'speculae' appears in the MSS. variation of 'spe gulae.' The diminutive 'specula' occurs in Plautus.

Ligurem] His 'cognomen' was Ligur, as we may collect, and he was not a Ligurian, as we must admit if we retain the reading 'nationis magis suae.' But 'suae' is omitted by S. T., Classen, and Baiter. Ligur was a Roman 'cognomen,' as Classen observes: we find M. Octavius Ligur mentioned by Cicero (Verr. ii. 1. c. 48). The Romans gave the Ligures a bad character; perhaps because they had much trouble in subduing these bold mountaineers, of whom Cicero says in another place, Contra Rullum (ii. 35): "Ligures montani duri atque agrestes. Docuit ager ipse nihil ferendo nisi multa culturâ et magno labore quaesitum." The Ligurians' mountains were the Apennines north and west and east of Genoa. Few of them were in the plain country. They were a hardy industrious people, fond of their liberty, and they were punished for it by the Romans.

planus] 'a vagabond.' S. T. have 'planius,' and there are other variations; but Gellius (xvi. 7) is our authority for the true reading: "Quamquam *planum* pro *Sycophanta* ille quoque Cicero in oratione scriptum reliquit quam pro Cluentio dixit."

quum palam] S. T. F. M. A. And yet in many editions the absurd reading 'quam palam' still appears.

27. *pronuntiari: Dixerunt.*] I have followed Classen here, who is followed by Baiter. The reading in the common texts is "pronuntiare. Judices dixerunt se id velle." I do not see clearly how Cannutius

In consilium erant ituri judices XXXII. Sententiis XVI absolutio confici poterat. Quadragena millia nummum in singulos judices distributa eum numerum sententiarum conficere debebant, ut ad cumulum spe majorum praemiorum ipsius Staieni sententia septimadecima accederet. Atque etiam casu tum, quod illud repente erat factum, Staienus ipse non aderat. Caussam nescio quam apud judicem defendebat. Facile hoc Habitus patiebatur, facile Cannutius; at non Oppianicus neque patronus ejus L. Quintius; qui quum esset illo tempore tribunus plebis, convicium C. Junio, judici quaestionis, maximum fecit, ut ne sine Aelio in consilium iretur: quumque id ei per viatores consulto negligentius agi videretur, ipse e publico judicio ad privatum Staieni judicium profectus est, et illud pro potestate dimitti jussit; Staienum ipse ad subsellia adduxit. Consurgitur in consilium, quum sententias Oppianicus, quae tum erat potestas, palam ferri velle dixisset, ut Staienus scire posset quid cuique deberetur. Varia judicum genera: nummarii pauci, sed omnes irati. Ut qui accipere in campo consuerunt, iis candidatis quorum nummos suppressos esse putant inimicissimi solent esse; sic ejusmodi judices infesti tum reo venerant. Ceteri nocentissimum esse arbitrabantur, sed exspectabant sententias eorum quos corruptos putabant, ut ex iis constituerent a quo judicium corruptum videretur. XXVIII. Ecce tibi ejusmodi sortitio ut in primis Bulbo et Staieno et Guttae esset judicandum. Summa omnium exspectatio quidnam sententiae ferrent leves ac

could declare that the matter was ready for the decision of the Judices. Classen refers to c. 30 as evidence that the accuser could invite the Judices 'ire in consilium,' to go and consider their verdict. It may be admitted that the prosecutor's advocate could invite them, but we cannot suppose that he could do more. If the Judices had heard enough, they might probably consent to retire and consider their verdict. The common text may be corrupt; but still I think that something was said about the Judices. The Scholium of Asconius, or the Pseudo-Asconius, on the last chapter of the first Actio in Verrem, on the word Dixi, is this: "Moris veterum fuit, cum satis visum esset fluxisse verborum, hanc sibi necessitatem finiendae orationis imponere, ut dicerent ad ultimum: Dixi: quod etiam ab utraque parte oratione consumpta, ut in consilium dimitterentur, praeco soleret pronuntiare: Dixerunt." The word 'praeco' is an emendation, and probably the right one. Compare Verr. ii. 2. c. 30. But the 'praeco' would act under the direction of the presiding judge.

judici quaestionis,] See Vol. I. Verr. ii. 1. c. 61, note; and Pro Cluentio, c. 20.

Aelio] I have followed Classen here. P. has 'illo,' which Baiter has in his text. T. has Aelio.—'viatores:' they were persons who carried summonses and the like: "A villa in senatum arcessebantur et Curius et ceteri senes, ex quo qui eos arcessebant viatores nominati sunt." (De Senect. c. 16.)—'pro potestate:' that is, his 'potestas' as tribune. We must suppose that the tribune could do what he did. He could bring Staienus to his duty.—'palam ferri:' this open voting could be done then, as he tells us; but not at the time when this speech was delivered. (See c. 20.)

28. *sortitio*] The 'sortitio,' as the context shows, determined the order in which the 'judices' should vote. 'Nummarii judices' are Judices who have been bribed.—'dubitatio quidnam:' See Vol. I. Verr. ii. 5. c. 7.—'Non liquere:' See Index.

nummarii judices. Atque illi omnes sine ulla dubitatione condemnant. Hic tum injectus est hominibus scrupulus, et quaedam dubitatio quidnam esset actum. Deinde homines sapientes et ex vetere illa disciplina judiciorum, qui neque absolvere hominem nocentissimum possent, neque eum de quo esset orta suspicio pecunia oppugnatum re illa incognita primo condemnare vellent, Non liquere dixerunt. Nonnulli autem severi homines, qui hoc statuerunt, quo quisque animo quid faceret spectari oportere, etsi alii pecunia accepta verum judicabant, tamen nihilo minus se superioribus suis judiciis constare putabant oportere: itaque damnarunt. Quinque omnino fuerunt, qui illum vestrum innocentem Oppianicum sive imprudentia sive misericordia sive aliqua suspicione sive ambitione adducti absolverunt.

Condemnato Oppianico, statim L. Quintius, homo maxime popularis, qui omnes rumorum et contionum ventos colligere consuesset, oblatam sibi facultatem putavit ut ex invidia senatoria posset crescere, quod ejus ordinis judicia minus jam probari populo arbitrabatur. Habetur una atque altera contio vehemens et gravis: accepisse pecuniam judices ut innocentem reum condemnarent tribunus plebis clamitabat; agi fortunas omnium dicebat; nulla esse judicia; qui pecuniosum inimicum haberet incolumem esse neminem posse. Homines totius ignari negotii, qui Oppianicum numquam vidissent, virum optimum et hominem pudentissimum pecunia oppressum arbitrarentur, incensi suspicione, rem in medium vocare coeperunt et caussam illam totam deposcere. Atque illo ipso tempore in aedes T. Annii, hominis honestissimi, necessarii et amici mei, noctu Staienus, arcessitus ab Oppianico, venit. Jam cetera nota sunt omnibus: ut cum illo Oppianicus egerit de pecunia, ut ille se redditurum esse dixerit, ut eorum sermonem omnem audierint viri boni, qui tum consulto propter in occulto stetissent: ut res patefacta atque in forum prolata, et pecunia omnis a Staieno extorta atque erepta sit. XXIX. Hujus Staieni persona, populo jam nota atque perspecta, ab nulla turpi suspicione abhorrebat; suppressam esse ab eo pecuniam quam pro reo pronuntiasset qui erant in contione non intelligebant. Neque enim docebantur. Versatam esse in judicio mentionem pecuniae sentiebant, innocentem reum condemnatum audiebant: Staieni sententia condemnatum videbant: non gratis id ab eo

crescere] "He thought an opportunity was offered to him of getting good opinion by bringing the senators into bad repute." See Vol. I. Verr. ii. 5. c. 67; and Pro Rosc. Am., c. 30.—'eum sermonem audierint omnem,' P. Baiter.

factum esse, quod hominem norant, judicabant. Similis in Bulbo, in Gutta, in aliis nonnullis suspicio consistebat. Itaque confiteor, licet enim jam impune hoc praesertim in loco confiteri, quod Oppianici non modo vita, sed etiam nomen ante illud tempus populo ignotum fuisset, indignissimum porro videretur circumventum esse innocentem pecunia, hanc deinde suspicionem augeret Staieni improbitas et nonnullorum ejus similium judicum turpitudo, caussam autem ageret L. Quintius, homo quum summa potestate praeditus, tum ad inflammandos animos multitudinis accommodatus; summam illi judicio invidiam infamiamque esse conflatam. Atque in hanc flammam recentem tum C. Junium, qui illi quaestioni praefuerat, injectum esse memini, et illum hominem aedilicium, jam praetorem opinionibus hominum constitutum, non disceptatione dicendi sed clamore de foro atque adeo de civitate esse sublatum.

Neque me poenitet hoc tempore potius quam illo caussam A. Cluentii defendere. Caussa enim manet eadem, quae mutari nullo modo potest, temporis iniquitas atque invidia recessit, ut quod in tempore mali fuit nihil obsit, quod in caussa boni fuit prosit. Itaque nunc quemadmodum audiar sentio, non modo ab iis quorum judicium ac potestas est, sed etiam ab illis quorum tantum est existimatio. At tum si dicerem, non audirer, non quod alia res esset, immo eadem; sed tempus aliud. XXX. Id adeo sic cognoscite. Quis tum auderet dicere nocentem condemnatum esse Oppianicum? quis nunc audet negare? Quis tum posset arguere ab Oppianico tentatum esse judicium pecunia? quis id hoc tempore infitiari potest? Cui tum liceret docere, Oppianicum reum factum esse tum denique quum duobus proximis praejudiciis condemnatus esset? quis est qui id hoc tempore infirmare conetur? Quare, invidia remota quam dies mitigavit, oratio mea deprecata est, vestra fides atque aequitas a veritatis disceptatione rejecit, quid est praeterea quod in caussa relinquatur?

Versatam esse in judicio pecuniam constat: ea quaeritur unde profecta sit, ab accusatore an ab reo. Accusator dicit haec: Primum, gravissimis criminibus accusabam ut nihil opus esset pecunia; deinde, condemnatum adducebam ut ne eripi quidem

29. *clamore de foro*] The word 'hominum,' which is generally put after 'clamore,' is omitted by Classen and Baiter, on the authority of S. T.; and perhaps it is better omitted. The 'disceptatio dicendi' means by a fair and regular examination of the matter, or in other words, by a trial. In the next chapter there is 'a veritatis disceptatione.'

pecunia posset; postremo, etiamsi absolutus fuisset, mearum tamen omnium fortunarum status incolumis maneret. Quid contra reus? Primum, ipsam multitudinem criminum et atrocitatem pertimescebam: deinde, Fabriciis propter conscientiam mei sceleris condemnatis, me esse condemnatum sentiebam: postremo, in eum casum veneram ut omnis mearum fortunarum status unius judicii periculo contineretur.

Age, quoniam corrumpendi judicii caussas ille multas et graves habuit, hic nullam, profectio ipsius pecuniae requiratur. Confecit tabulas diligentissime Cluentius. Haec autem res habet hoc certe ut nihil possit neque additum neque detractum de re familiari latere. Anni sunt octo quum ista caussa in ista meditatione versatur, quum omnia quae ad eam rem pertinent et ex hujus et ex aliorum tabulis, agitatis, tractatis, inquiritis, quum interea Cluentianae pecuniae vestigium nullum invenitis. Quid Albiana pecunia, vestigiisne nobis odoranda est an ad ipsum cubile vobis ducibus venire possumus? Tenentur uno in loco H-S ɪↃᴄxʟ: tenentur apud hominem audacissimum: tenentur apud judicem. Quid vultis amplius? At enim Staienus non fuit ab Oppianico, sed a Cluentio ad judicium corrumpendum constitutus. Cur eum quum in consilium iretur Cluentius et Cannutius abesse patiebantur? cur quum in consilium mittebant, Staienum judicem qui pecuniam dederant non requirebant? Oppianicus querebatur, Quintius flagitabat? sine Staieno ne in consilium iretur tribunicia potestate effectum est? At condemnavit. Hanc enim condemnationem dederat obsidem Bulbo et ceteris ut destitutus ab Oppianico videretur. Quare si istinc caussa corrumpendi judicii, si istinc pecunia, istinc Staienus, istinc denique omnis fraus et audacia est; hinc pudor, honesta vita, nulla suspicio pecuniae, nulla corrumpendi judicii caussa; patimini, veritate patefacta atque omni errore sublato, eo transire illius tur-

30. *Confecit tabulas*] He kept books of accounts, as the context shows; and it is a common expression.

Anni sunt, &c.] "It is now eight years that this cause has been the subject of your consideration." 'Quum' is sometimes used this way to express what I have attempted to express in English. It is not difficult to see how this form of speech may have arisen, if we say, "now when this cause is a matter for your consideration, it is eight years." So in the De Divin. ii. 36: "Quam multi anni sunt quum bella a proconsulibus et a propraetoribus administrantur, qui auspicia non habent." Comp. Virgil, Aen. iii. 645.

vobis ducibus] S. T. have 'judicibus,' which Classen takes, and defends acutely as usual. I am not persuaded that he is right. Baiter has 'ducibus.'

H-S ɪↃᴄxʟ] This is the 'sexcenta quadraginta millia,' in c. 25.

At enim Staienus] This is one supposed objection on the other side; and 'At condemnavit' is another.

qui pecuniam] This is Classen's emendation, in place of 'cui.' He has also continued the interrogation to 'effectum est,' which makes all clear. Baiter has not continued the interrogation further than 'requirebant.'

pitudinis infamiam ubi cetera maleficia consistunt; ab eo invidiam discedere aliquando ad quem numquam accessisse culpam videtis.

XXXI. At enim pecuniam Staieno dedit Oppianicus non ad corrumpendum judicium, sed ad conciliationem gratiae. Tene hoc, Atti, dicere, tali prudentia, etiam usu atque exercitatione praeditum? Sapientissimum esse dicunt eum cui quod opus sit ipsi veniat in mentem; proxime accedere illum qui alterius bene inventis obtemperet. In stultitia contra est. Minus enim stultus est is cui nihil in mentem venit quam ille qui quod stulte alteri venit in mentem comprobat. Istam conciliationem gratiae Staienus tum recenti re quum faucibus premeretur excogitavit, sive, ut homines tum loquebantur, a P. Cethego admonitus [istam dedit conciliationis et gratiae fabulam]. Nam fuisse hunc tum hominum sermonem recordari potestis: Cethegum, quod hominem odisset et quod ejus improbitatem versari in re publica nollet, et quod videret eum qui se ab reo pecuniam quum judex esset clam atque extra ordinem accepisse confessus esset, salvum esse non posse, minus ei fidele consilium dedisse. In hoc si improbus Cethegus fuit, videtur mihi adversarium removere voluisse. Sin erat ejusmodi caussa ut Staienus nummos se accepisse negare non posset; nihil autem erat periculosius nec turpius quam ad quam rem accepisset confiteri; non est consilium Cethegi reprehendendum. Verum alia caussa tum Staieni fuit, alia nunc, Atti, tua est. Ille quum re premeretur, quodcumque diceret, honestius diceret quam si quod erat factum fateretur; te vero illud idem quod tum explosum et ejectum est nunc rettulisse demiror. Qui enim poterat tum in gratiam redire cum Oppianico Cluentius, qui cum matre habebat simultates? haerebat in tabulis publicis reus et accusator; condemnati erant Fabricii; nec elabi alio accusatore poterat Albius,

31. *istam—fabulam.*] These words are omitted in S. T.: and Classen has a note in which he gives reasons for supposing that they are an interpolation. His reasons are ingenious, but I am not convinced that they are sufficient.

extra ordinem] See Pro Fonteio, c. 3.—'rettulisse:' S. T. have 'detulisse;' which shows that we cannot always trust them. —'habebat simultates:' om. Baiter.

haerebat] Both the name of the prosecutor Cluentius and of the accused Oppianicus were on the public records. Both parties were held fast there: the charge was recorded, and the names of the accuser and the accused. The guilt of Oppianicus was so clear that it was impossible he could escape, if any other man than Cluentius was the accuser; and if he escaped when Cluentius was the accuser, there might be a suspicion that Cluentius was not acting fairly, that he was 'praevaricating.' If he dropped the charge, then he ran the risk of disgrace for making a charge that he would not or could not maintain. He might be considered guilty of 'calumnia,' for one definition is this: "Calumniari est falsa crimina intendere (Dig. 48. 16. 1); praevaricari, vera crimina abscondere; tergiversari, in universum ab accusatione desistere."

nec sine ignominia calumniae relinquere accusationem Cluentius. XXXII. An ut praevaricaretur? Jam id quoque ad corrumpendum judicium pertinet. Sed quid opus erat ad eam rem judice sequestre? et omnino, quamobrem tota ista res per Staienum potius, hominem ab utroque alienissimum, sordidissimum, turpissimum, quam per bonum aliquem virum ageretur et amicum necessariumque communem? Sed quid ego haec pluribus quasi de re obscura disputo, quum ipsa pecunia quae Staieno data est, numero ac summa sua, non modo quanta fuerit, sed etiam ad quam rem fuerit, ostendat? Sexdecim dico judices ut Oppianicus absolveretur corrumpendos fuisse: ad Staienum sexcenta quadraginta millia nummûm esse delata. Si, ut tu dicis, gratiae conciliandae caussa, quadraginta istorum accessio millium quid valet? si, ut nos dicimus, ut quadragena millia sexdecim judicibus darentur, non Archimedes melius potuit describere.

At enim judicia facta permulta sunt a Cluentio judicium esse

32. *accessio*] The addition of the forty thousand makes it forty thousand for each of the sixteen. No arithmetician could have fixed the sum better, not even the great Archimedes, whose neglected tomb Cicero discovered at Syracuse, when he was 'quaestor' in Sicily.

At enim judicia] These 'judicia' were certainly not trials, in which Cluentius was convicted of having bribed the Judices on the trial of Oppianicus, for Cicero says: "Immo vero ante hoc tempus omnino ista ipsa res suo nomine in judicium numquam est vocata." He can only mean certain 'judicia' in which others were convicted, and the verdict was such as to throw suspicion on Cluentius.

I shall give the substance of Klotz's note, who thinks it probable that Cluentius was guilty of bribing these 'judices,' and that Cicero is using all his art to free him from the suspicion. He says—Accordingly Cicero maintains that C. Junius, being the 'judex quaestionis' on this occasion, was brought before a public court by L. Quinctius, and condemned in an illegal way; not because he had as a bribed 'judex' condemned Oppianicus, but only because he had not sworn to the law and had neglected this form; yet it appears from Cicero's own words, that C. Junius was convicted chiefly because he was guilty of having taken a bribe. There is a passage in the next chapter (c. 33) which supports the view expressed in the notes on c. 1, that the court sat in judgment not only on the matter of the poisoning, but also on the condemnation of Oppianicus, which had been accomplished by bribery. The words are "At si ita esset —At ipse ea lege quaerebat;" from which we clearly see that one and the same Quaesitor, under the Lex Cornelia de sicariis et veneficis, had pronounced judgment not only on direct attempts to murder and poison, but also on condemnations made contrary to law. Garatoni makes the remark here that C. Junius could not have been tried for 'repetundae,' because he was not one of the 'judices,' but only 'judex quaestionis;' but we do not think, if we may judge from what is preserved of that Lex (Dig. 48, tit. 11, De Lege Julia Repetundarum), that this must be taken so strictly as Garatoni takes it (compare particularly L. 7). However, Garatoni rightly observes that he might have been tried under the Lex Cornelia de Sicariis, for Cicero, c. 54, 55. 57, says that this Lex applies to him who in any way has brought about a false condemnation; and this agrees also with what the old jurists say (Dig. 48. 8. 1): "quive quum magistratus esset, publicove judicio praesset," &c.; and in the same L. § 1; "quive magistratus judexque quaestionis ob capitalem caussam pecuniam acceperit," &c. They did not choose to prosecute him under the first Lex, because it was too general; under the second they could not properly prosecute him, because C. Junius himself was Quaesitor in this matter. Accordingly

corruptum. Immo vero ante hoc tempus omnino ista ipsa res suo nomine in judicium numquam est vocata. Ita multum agitata, ita diu jactata ista res est, ut hodierno die primum caussa illa defensa sit, hodierno die primum veritas vocem contra invidiam his judicibus freta miserit. Verumtamen ista multa judicia quae sunt? Ego enim me ad omnia confirmavi et sic paravi ut docerem, quae facta postea judicia de illo judicio dicerentur, partim ruinae similiora aut tempestati quam judicio et disceptationi fuisse, partim nihil contra Habitum valere, partim etiam pro hoc esse, partim esse ejusmodi ut neque appellata umquam judicia sint neque existimata. Hic ego, magis ut consuetudinem servem quam quod vos non vestra hoc sponte faciatis, petam a vobis ut me dum de his singulis disputo judiciis attente audiatis. XXXIII. Condemnatus est C. Junius qui ei quaestioni praefuerat; adde etiam illud, si placet, tum est condemnatus quum esset judex quaestionis. Non modo caussae sed ne legi quidem quidquam per tribunum plebis laxamenti datum est. Quo tempore illum a quaestione ad nullum aliud rei publicae munus abduci licebat, eo tempore ad quaestionem ipse abreptus est. At quam quaestionem? Vultus enim vestri, judices, me invitant ut quae reticenda putaram libeat jam libere dicere. Quid, illa tandem quaestio aut disceptatio aut judicium fuit? Putabo fuisse. Dicat qui vult hodie de illo populo concitato cui tum populo mos gestus est, qua de re Junius caussam dixerit. Quemcumque rogaveris, hoc respondebit, quod pecuniam acceperit, quod innocentem circumvenerit. Est haec opinio. At si ita esset, hac lege accusatum esse oportuit qua accusatur Habitus. At

they chose a third form of proceeding, and the charge was that the oath and the 'subsortitio' had been neglected. Only the Praetor himself was released from the oath (see Vol. I. Verr. Act. i. c. 10). The Judex quaestionis, though he represented the Praetor, seems not to have been legally released from it.

33. *laxamenti*] He was hurried before the popular assembly. The 'tribunus' allowed no indulgence either in respect of the case or the Lex. The case (caussae) seems to be the case of Junius, who ought to have had time to prepare his defence; and the Lex seems to be, as Manutius explains it, the Lex which forbade a Judex quaestionis to be dragged before the popular assembly.

At si ita] This is Cicero's objection, "But if it were so, he ought to have been prosecuted under this Lex, under which Habitus is tried;" the Lex Cornelia de Sicariis (see c. 54). 'At ipse ea lege quaerebat' is the supposed answer. Cicero rejoins 'Paucos dies;' he might have waited a few days. The answer is: 'At neque privatus,' &c. The 'tribunus' would not wait till his term of office was expired, and he had returned to a private station. The 'tribunus' demanded that he should be fined, 'mulctam petivit,' under a Lex; and because he had neglected 'in legem jurare,' to swear to observe the Lex, as the Judices were bound to do, and the Judex Quaestionis also. Cicero says 'quae res nemini unquam fraudi fuit,' where he admits that Junius ought to have taken the oath, but that nobody was ever punished for not having taken it. 'Fraudi' is that which is to a man's detriment or harm.

ipse ea lege quaerebat. Paucos dies exspectasset Quintius. At neque privatus accusare, nec sedata [jam] invidia volebat. Videtis igitur non in caussa sed in tempore ac potestate spem omnem accusatoris fuisse. Mulctam petivit. Qua lege? quod in legem non jurasset; quae res nemini umquam fraudi fuit: et quod C. Verres, praetor urbanus, homo sanctus et diligens, subsortitionem ejus in eo codice non haberet qui tum interlitus proferebatur. His de caussis C. Junius condemnatus est, judices, levissimis et infirmissimis; quas omnino in judicium afferri non oportuit. Itaque oppressus est non caussa sed tempore. XXXIV. Hoc vos Cluentio judicium putatis obesse oportere? Quam ob caussam? Si ex lege subsortitus non erat Junius, aut si in aliquam legem aliquando non juraverat, idcirco illius damnatione aliquid de Cluentio judicabatur? Non, inquit; sed ille idcirco illis legibus condemnatus est quod contra aliam legem commiserat. Qui hoc confitentur, possunt iidem illud judicium fuisse defendere? Ergo, inquit, idcirco infestus tum populus Romanus Junio fuit quod illud judicium corruptum per eum putabatur. Num igitur hoc tempore caussa mutata est? num alia res, alia ratio illius judicii, alia natura totius negotii nunc est ac tum fuit? Non opinor ex iis rebus quae gestae sunt rem ullam potuisse mutari. Quid ergo est caussae, quod nunc nostra defensio audiatur tanto silentio, tum Junio defendendi sui potestas erepta sit? Quia tum in caussa nihil erat praeter invidiam, errorem, suspicionem, contiones quotidianas, seditiose ac populariter concitatas. Accusabat tribunus plebis idem in contionibus, idem ad subsellia: ad judicium non modo de contione, sed etiam cum ipsa contione veniebat. Gradus illi Aurelii tum novi quasi pro

sanctus et diligens,] "This honest and careful" man was Praetor at the time, and his memorandum book (codex) did not contain the 'subsortitio,' for it was produced with the entries effaced.

34. *subsortitus*] The complete expression is in the next chapter (35), 'subsortitus judicem non esset.' In c. 37 there is 'paucos dies ex subsortitione sedisset.' The first 'sortitio,' says Manutius, was from the whole number of Judices, and it was done by the Praetor Urbanus; the second, or 'subsortitio,' was made by the Quaesitor to supply the place of those who had been challenged (rejecti) by the prosecutor and the accused (see Vol. I. Verr. Act. i. c. 10). Junius was charged with not having made this 'subsortitio' pursuant to the Lex.

populus Romanus Junio] Classen observes that the absurd reading 'Praetor Junio' has been in the printed books ever since it first appeared in the Princeps editio. There is no consistency in speaking of the Praetor here; but it is consistent to speak of the Populus Romanus. S. T. have 'populus Rom.' and P. F. have the abbreviation PR., which is used both for Praetor and for Populus Romanus.

ad judicium] It seems that the Tribune came with a rabble at his heels to the place where Junius was sitting in court. The Gradus Aurelii were in the Forum Romanum; and perhaps it was a tribunal that Cicero speaks of. The place for trying these Quaestiones was in the Forum, and there might be several of these Tribunalia.

theatro illi judicio aedificati videbantur; quos ubi accusator concitatis hominibus complerat, non modo dicendi ab reo sed ne surgendi quidem potestas erat. Nuper apud C. Orchivium, collegam meum, locus ab judicibus Fausto Sullae de pecuniis residuis non est constitutus; non quo illi aut exlegem esse Sullam, aut caussam pecuniae publicae contemptam atque abjectam putarent, sed quod accusante tribuno plebis conditione aequa disceptari posse non putaverunt. Quid, conferam Sullamne cum Junio, an hunc tribunum plebis cum Quintio, an vero tempus cum tempore? Sulla maximis opibus, cognatis, affinibus, necessariis, clientibus plurimis: haec autem apud Junium parva, et infirma et ipsius labore quaesita, atque collecta. Hic tribunus plebis modestus, pudens, non modo non seditiosus sed etiam seditiosis adversarius: ille autem acerbus, criminosus, popularis homo ac turbulentus. Tempus hoc tranquillum atque pacatum: illud omnibus invidiae tempestatibus concitatum. Quae quum ita essent, in Fausto tamen illi judices statuerunt iniqua conditione reum caussam dicere, quum adversario ejus ad jus accusationis summa vis potestatis accederet.

XXXV. Quam quidem rationem vos, judices, diligenter pro vestra sapientia et humanitate cogitare et penitus perspicere debetis, quid mali, quantum periculi uni cuique nostrum inferre possit vis tribunicia, conflata praesertim invidia et contionibus seditiose concitatis. Optimis hercule temporibus, tum quum homines se non jactatione populari sed dignitate atque innocentia tuebantur, tamen nec P. Popillius, neque Q. Metellus, clarissimi atque amplissimi viri, vim tribuniciam sustinere potuerunt: nedum his temporibus, his moribus, his magistratibus, sine vestra sapientia ac sine judiciorum remediis, salvi esse possimus. Non fuit igitur illud judicium judicii simile, judices, non fuit; in quo non modus ullus est adhibitus, non

de—residuis] This was Peculatus, as it is explained by Paulus (Dig. 48. 13. 2): "Lege Julia de residuis tenetur, qui publicam pecuniam delegatam in usum aliquem retinuit neque in eum consumpsit." 'Locus' is explained by the passage in c. 20: "reum statim fecit, utique ei locus primus constitueretur—impetravit." The 'judices' would not allow a 'judicium,' or they did not admit that there could be a 'judicium' on fair terms, when a 'tribunus' was the prosecutor.

'Exlex' is he who is out of the reach of the Lex, as in Livy, ix. c. 34: "An hoc dicis, Appi, non teneri Aemilia lege populum, an populum teneri, te unum exlegem esse."

35. *P. Popillius*] The man who had been banished by a Lex of C. Gracchus, and who was restored on the motion of L. Bestia (Cicero, Brutus, c. 25. 34): "L. Bestia bonis initiis orsus tribunatus, nam P. Popillium vi C. Gracchi expulsum sua rogatione restituit, vir et acer et non indisertus" (Classen). The story of Popillius and his exile is told briefly by Plutarch (C. Gracchus, c. 4).

The story of the turbulent tribune Saturninus, and of Metellus whom he drove into exile, is told by Plutarch (Marius, c. 29).

mos consuetudoque servata, non caussa defensa. Vis illa fuit, et, ut saepe jam dixi, ruina quaedam atque tempestas, et quidvis potius quam judicium aut disceptatio aut quaestio. Quod si quis est qui illud judicium fuisse arbitretur et qui his rebus judicatis standum putet, is tamen hanc caussam ab illa debet sejungere. Ab illo enim, sive quod in legem non jurasset, sive quod ex lege subsortitus judicem non esset, mulcta petita esse dicitur. Cluentii autem ratio cum illis legibus, quibus a Junio mulcta petita est, nulla potest ex parte esse conjuncta. At enim etiam Bulbus est condemnatus. Adde majestatis, ut intelligas hoc judicium cum illo non esse conjunctum. At est hoc illi crimen objectum. Fateor; sed etiam legionem esse ab eo sollicitatam in Illyrico C. Cosconii litteris et multorum testimoniis planum factum est; quod crimen erat proprium illius quaestionis, et quae res lege majestatis tenebatur. At hoc obfuit ei maxime. Jam ista divinatio est; qua si uti licet, vide ne mea conjectura multo sit verior. Ego enim sic arbitror, Bulbum, quod homo nequam, turpis, improbus, multis flagitiis contaminatus in judicium sit adductus, idcirco facilius esse damnatum. Tu mihi ex tota caussa Bulbi quod tibi commodum est eligis, ut id esse secutos judices dicas.

XXXVI. Quapropter hoc Bulbi judicium non plus huic obesse caussae debet quam illa, quae commemorata sunt ab accusatore, duo judicia P. Popillii et T. Guttae, qui caussam de ambitu dixe-

subsortitus judicem] Baiter puts [judicem] thus, quoting Garatoni, who affirms that 'judicem' is incorrect, for it ought to be 'judices,' as in Verr. Act. i. c. 61. Garatoni observes that in c. 34, Lambinus inserted 'judicem' after 'subsortitus,' contrary to the MSS.; and he concludes that some 'imperitus' may have done so here. I see no objection to 'judicem.' It means any 'judex.'

At enim] 'Enim' is in S. T., and it is wanted. It is the form in which an objection is introduced. It is very common in Cicero. Classen compares it with ἀλλὰ γάρ.

majestatis] See Vol. I. Divin. c. 21. This offence of Bulbus in exciting a mutiny was comprehended in the Lex Julia Majestatis, which we may suppose contained many legal provisions of an earlier time. Under the definition of Majestas Ulpian says, (Dig. 48. 4. 1. § 1) "quive milites sollicitaverit concitaveritve quo seditio tumultusve adversum rem publicam fiat."

Cicero says of C. Cosconius Calidianus (Brutus, c. 69): "C. Cosconium Calidianum, qui nullo acumine eam tamen verborum copiam, si quam habebat, praebebat populo cum multa concursatione magnoque clamore." He held Illyricum B.C. 79: "Ad Illyricum missus est Cn. Cosconius proconsule, multam partem Dalmatiae subegit, Salonas cepit et composito bello Romam post biennium rediit." (Eutropius vi. 4.) It seems that Bulbus tried to make his men mutiny, and that Cosconius wrote home about him.

divinatio] Vol. I. Divin. Introduction.—'Tu mihi,' &c.: this is not addressed to any particular person. 'Tu' and 'mihi' in this juxtaposition cannot be rendered in English. This is the usual form in Latin when the speaker wishes to present another and himself before the reader, or the hearer; but the relation in which he wishes to present the two persons, himself and the other, is determined by the other words.—'quod commodum:' see Vol. I. Verr. ii. 5. c. 5, and Pro Tullio, § 17.

runt; qui accusati sunt ab iis qui erant ipsi ambitus condemnati; quos ego non idcirco esse arbitror in integrum restitutos, quod planum fecerint illos ob rem judicandam pecuniam accepisse, sed quod judicibus probaverint, quum in eodem genere, in quo ipsi offendissent, alios reprehendissent, se ad praemia legis venire oportere. Quapropter neminem dubitare existimo quin illa damnatio ambitus nulla ex parte cum caussa Cluentii vestroque judicio conjuncta esse possit. Quid, quod Staienus est condemnatus? Non dico hoc tempore, judices, id quod nescio an dici oporteat, illum majestatis esse condemnatum: non recito testimonia hominum honestissimorum, quae in Staienum sunt dicta ab iis qui M. Aemilio, clarissimo viro, legati et praefecti et tribuni militares fuerunt; quorum testimoniis planum factum est, maxime ejus opera quum quaestor esset in exercitu seditionem esse conflatam. Ne illa quidem testimonia recito, quae dicta sunt, de H-S ıↄc; quae ille quum accepisset nomine judicii Safiniani, sicut in Oppianici judicio postea, reticuit atque suppressit. Omitto et haec et alia permulta quae illo judicio in Staienum dicta sunt; hoc dico, eandem tum fuisse P. et L. Cominiis, equitibus Romanis, honestis hominibus et disertis, controversiam cum Staieno quem accusabant, quae nunc mihi est cum Attio. Cominii dicebant idem quod ego dico: Staienum ab Oppianico pecuniam accepisse ut judicium corrumperet: Staienus conciliandae gratiae caussa accepisse dicebat. Irridebatur haec illius reconciliatio, et persona

36. *ambitus*] See Vol. I. Verr. Excursus, Judicia; and the Oration Pro. Cn. Plancio. The words 'se ad praemia legis,' allude to the reward given to him who successfully prosecuted another for 'ambitus.' He was rewarded by being restored 'in integrum' or to his former state. See Dig. 48. 14. 2.

This P. Popillius is not the Popillius who was mentioned before.

H-S ıↄc;] This is the sum mentioned in c. 25, where it is written at full length, 'sexcentis millibus nummûm.'—'reticuit:' S. T.; the other reading is 'retinuit.'

P. et L. Cominiis,] Cicero mentions P. Cominius (Brutus, c. 78): "P. Cominium Spoletinum, quo accusante defendi C. Cornelium, in quo et compositum dicendi genus et acre et expeditum fuit." Asconius in the argument to the Corneliana says: "Extat oratio Cominii accusatoris, quam sumere in manus est aliquod operae pretium, non solum propter Ciceronis orationes—sed etiam propter semet ipsum."

conciliandae gratiae] 'Reconciling Oppianicus and Cluentius.'—'ad Juturnae:' he placed some gilded statues at the temple of Juturna. The gilding of bronze statues was common; and there was a good reason for it. Nothing is uglier than a bronze, blackened statue; which is perhaps the reason why we make them and set them up. Juturna was the sister of Turnus, a nymph of lakes and fountains:

"Extemplo Turni sic est affata sororem
Diva deam, stagnis quae fluminibusque sonoris
Praesidet: hunc illi rex aetheris altus honorem
Juppiter erepta pro virginitate sacravit."
Aen. xii. 139.

Staienus recorded some service of his in bringing to friendly terms with the Romans, we may suppose, some of the petty kings who were under Roman protection.

viri boni suscepta, sicut in statuis inauratis quas posuit ad Juturnae: quibus subscripsit, REGES AB SE IN GRATIAM ESSE REDUCTOS. Exagitabantur omnes ejus fraudes atque fallaciae: tota vita in ejusmodi ratione versata aperiebatur, egestas domestica, quaestus forensis in medium proferebatur: nummarius interpres pacis et concordiae non probabatur. Itaque tum Staienus, quum idem defenderet quod Attius, condemnatus est. Cominii quum hoc agerent, quod nos in tota caussa egimus, probaverunt. Quamobrem si Staieni damnatione, Oppianicum judicium corrumpere voluisse, Oppianicum judici ad emendas sententias dedisse pecuniam, judicatum est; quum ita constitutum sit uti in illa culpa aut Cluentius sit aut Oppianicus, Cluentii nummus nullus judici datus ullo vestigio reperitur, Oppianici pecunia post judicium factum ab judice ablata est; potest esse dubium quin illa damnatio Staieni non modo non sit contra Cluentium, sed maxime nostram caussam defensionemque confirmet? XXXVII. Ergo adhuc Junii judicium video esse ejusmodi ut incursionem potius seditionis, vim multitudinis, impetum tribunicium, quam judicium appellandum putem. Quod si quis illud judicium appellet, tamen hoc confiteatur necesse est, nullo modo illam mulctam quae a Junio petita sit cum Cluentii caussa posse conjungi. Illud igitur Junianum per vim factum est, Bulbi et Popillii et Guttae contra Cluentium non est: Staieni etiam pro Cluentio est. Videamus ecquod aliud judicium quod pro Cluentio sit proferre possimus.

Dixitne tandem caussam C. Fidiculanius Falcula, qui Oppianicum condemnarat, quum praesertim, id quod fuit in illo judicio invidiosissimum, paucos dies ex subsortitione sedisset? Dixit, et bis quidem dixit. In summam enim L. Quintius invidiam contionibus eum quotidianis seditiosis et turbulentis adduxerat. Uno judicio mulcta est ab eo petita, sicut ab Junio, quod non suae decuriae munere neque ex lege sedisset. Paullo sedatiore tempore est accusatus quam Junius, sed eadem fere lege et crimine. Quia nulla in judicio seditio neque vis nec turba versata est, prima actione facillime est absolutus. Non numero hanc absolutionem. Nihilominus enim potest, ut illam mulctam non commiserit, ac-

interpres] An 'interpres' in one sense is a man who makes a bargain between people, and it may be a corrupt bargain. See Vol. I. Verr. Act. 1. c. 12.

37. *Falcula*,] Cicero says something about this man in another place (Pro Caecina, c. 10, note), where he calls him a knave. He sat for a few days as one of the Judices, who had been chosen by lot to supply the place of others (ex subsortitione). He was liable to a fine for having taken his seat irregularly as Judex; for it was not the

cepisse tamen pecuniam ob rem judicandam * * capta nusquam Staienus eadem lege dixit. Proprium crimen illud quaestionis ejus non fuit. Fidiculanius quid fecisse dicebatur? accepisse a Cluentio H-S cccc. Cujus erat ordinis? senatorii. Qua lege in eo genere a senatore ratio repeti solet de pecuniis repetundis, ea lege accusatus honestissime est absolutus. Acta est enim caussa more majorum sine vi, sine metu, sine periculo: dicta et exposita et demonstrata sunt omnia. Adducti judices sunt non modo potuisse honeste ab eo reum condemnari qui non perpetuo sedisset, sed aliud si is judex nihil scisset nisi quae praejudicia de eo facta esse constarent, audire praeterea nihil debuisse. XXXVIII. Tum etiam illi quinque, qui imperitorum hominum rumusculos aucupati tum illum absolverunt, jam suam clementiam laudari magno opere nolebant, a quibus si qui quaereret sedissentne judices in C. Fabricium, sedisse se dicerent; si interrogarentur, num quo crimine is esset accusatus praeterquam veneni ejus quod quaesitum Habito diceretur, negarent; si deinde essent rogati, quid judicassent, condemnasse se dicerent: nemo enim absolvit. Eodem modo quaesitum si esset de Scamandro, certe idem respondissent: tametsi ille una sententia est absolutus, sed illam unam nemo tum istorum suam dici vellet. Uter igitur facilius suae sententiae rationem redderet; isne qui se et sibi et rei judicatae constitisse dicit, an ille qui se in principem maleficii lenem, in adjutores ejus et conscios vehementissimum esse respondet? Quorum ego de sententia non debeo disputare: neque enim dubito quin tales viri suspicione aliqua perculsi repentina de statu suo declinarint. Quare eorum qui absolverunt misericordiam non reprehendo; eorum qui in judicando superiora judicia secuti sunt sua sponte, non Staieni fraude, constantiam comprobo; eorum vero qui sibi Non liquere dixerunt sapientiam laudo, qui absolvere eum quem nocentissimum cognorant, et quem ipsi bis [jam] antea condemnarant, nullo modo poterant; condemnare, quum tanta con-

turn of his Decuria, as it seems, to furnish a Judex. The term Decuria is explained in Vol. I. Verr. ii. 2. c. 32.

capta nusquam] This is corrupt; and cannot be mended.

adducti] This is the MSS. reading, in place of which some editions have 'addocti' and 'docti.' It means that the "Judices were brought to the opinion that not only might an accused man be honourably condemned by one who had not sat all through the trial" (qui non perpetuo sedisset) &c. Classen gives similar examples from Cicero (Ad Att. xi. 16): "ego non adducor quemquam bonum ullam salutem putare mihi tanti fuisse;" and De Fin. i. 3.

38. *illum absolverunt,*] 'Illum' is Oppianicus, c. 28.—'quin tales:' S. T. Baiter has 'quin ii tales.'—'paulo posterius:' after they had heard the matter a second time; on the second hearing after the 'ampliatio.'

silii infamia et tam atrocis rei suspicio esset injecta, paullo posterius patefacta re maluerunt. Ac ne ex facto solum sapientes illos judicetis, sed etiam ex hominibus ipsis quod hi fecerunt rectissime ac sapientissime factum probetis, quis P. Octavio Balbo ingenio prudentior, jure peritior, fide, religione, officio diligentior aut sanctior commemorari potest? non absolvit. Quis Q. Considio constantior? quis judiciorum, atque ejus dignitatis, quae in judiciis publicis versari debet, peritior? quis virtute, consilio, auctoritate praestantior? ne is quidem absolvit. Longum est de singulorum virtute ita dicere; quae, quia cognita sunt ab omnibus, verborum ornamenta non quaerunt. Qualis vir M. Juventius Pedo fuit ex vetere illa judicum disciplina? qualis L. Caulius Mergus? M. Basilus? C. Caudinus? qui omnes in judiciis publicis jam tum florente re publica floruerunt. Ex eodem numero L. Cassius, Cn. Heius, pari et integritate et prudentia: quorum nullius sententia est Oppianicus absolutus. Atque in his omnibus natu minimus, ingenio et diligentia et religione par iis quos antea commemoravi, P. Saturius in eadem sententia fuit. O innocentiam Oppianici singularem! quo in reo, qui absolvit, ambitiosus; qui distulit, cautus; qui condemnavit, constans existimatur.

XXXIX. Haec tum agente Quintio neque in contione neque in judicio demonstrata sunt. Neque enim ipse dici patiebatur, nec per multitudinem concitatam consistere cuiquam in dicendo licebat. Itaque ipse, postquam Junium pervertit, totam caussam reliquit. Paucis enim diebus illis et ipse privatus est factus, et hominum studia defervisse intelligebat. Quod si per quos dies Junium accusavit Fidiculanium accusare voluisset, respondendi Fidiculanio potestas facta non esset. Ac primo quidem omnibus illis judicibus qui Oppianicum condemnarant minabatur. Jam insolentiam noratis

hominibus] The reading 'nominibus' is in no MS.; and it would be safe to alter it if it were in all the MSS. Baiter has 'quod ii fecerunt,' but we want 'hi;' and S. T. have 'hi.' The reading 'fecerint' is a manifest error, which is corrected by S. T. The sense requires a direct affirmation.

commemorari potest?] Classen has 'commemorari posset.' I don't know where he got it from; but it is wrong.

Balbo] L. Octavius Balbus is named in the Verrine Orations, ii. 2. c. 12; and he may be the person who is mentioned here. But then there is an error in the 'praenomen' in one passage or in the other, or in both.

Cn. Heius,] Cicero (Verr. ii. 4. c. 2) speaks of a Greek of Messana named Heius. He had taken a Roman name, for we may conclude that as he was a Greek, and as Heius occurs here, that Heius is a Roman gentile name.

39. *Haec—agente*] 'Agenti,' S. T. F. The other reading is 'agitante.' 'Haec' is the nominative.—'paucis—illis:' 'within these few days' is in a few days after the ruin of Junius. See Vol. I. Verr. ii. 4. c. 18.—'defervisse:' S. T. M., instead of 'deferbuisse.'—'ignorantia:' S. T., Classen. The other reading is 'ignoratio.' If there is any difference, Classen supposes that 'ignoratio' is ignorance of any particular things; 'ignorantia' is ignorance generally.

hominis: noratis animos ejus ac spiritus tribunicios. Quod erat odium! dii immortales! quae superbia! quanta ignorantia sui! quam gravis atque intolerabilis arrogantia! qui illud jam ipsum acerbe tulerit, ex quo illa nata sunt omnia, non sibi ac defensioni suae condonatum esse Oppianicum; proinde quasi non satis signi esse debuerit ab omnibus eum fuisse desertum qui se ad patronum illum contulisset. Erat enim Romae summa copia patronorum, hominum eloquentissimorum atque amplissimorum, quorum certe aliquis defendisset equitem Romanum, in municipio suo nobilem, si honeste putasset ejusmodis caussam posse defendi. XL. Nam Quintius quidem, quam caussam umquam antea dixerat, quum annos ad quinquaginta natus esset? quis eum umquam non modo in patroni sed in laudatoris aut advocati loco viderat? qui quod Rostra jamdiu vacua, locumque illum post adventum L. Sullae a tribunicia voce desertum oppresserat, multitudinemque desuefactam jam a contionibus ad veteris consuetudinis similitudinem revocaverat, idcirco cuidam hominum generi paullisper jucundior fuit. Atque idem quanto in odio postea suis illis ipsis fuit, per quos in altiorem locum ascenderat? Neque injuria. Facite enim ut non solum mores et arrogantiam ejus, sed etiam vultum atque amictum atque etiam illam usque ad talos demissam purpuram recordemini. Is, quasi non esset ullo modo ferendum se ex judicio discessisse victum, rem a subselliis ad Rostra detulit. Et jam querimur saepe hominibus novis non satis magnos in hac civitate esse fructus? Nego usquam umquam fuisse majores, ubi, si quis

40. *laudatoris*] A witness to character, 'laudator,' or a help in any way (advocatus).

post adventum L. Sullae] See Pro Fonteio, c. 3, note. The Rostra had long been vacant, and the voice of the Tribuni had not been heard there, for Sulla had checked liberty of speech, which was the same thing then as if a tyrant should suppress printing now. Sulla deprived the Tribuni of their power about seven years before the cause of Oppianicus was heard; and about the same time he made the Senatores only eligible to the office of Judices in the Quaestiones. Verres was Praetor Urbanus when Oppianicus was tried. After that Verres was governor of Sicily for three years, and in the next year he was prosecuted by Cicero. The Tribunicia potestas was restored B.C. 70 (Vol. I. Divin. c. 3, note; and Act. i. c. 15).—'oppresserat:' Manutius explains by 'occupaverat primus.'—'in altiorem locum:' to a higher rank, to a higher office, the aedileship, as we may conjecture. Compare Verr. Act. ii. 4. c. 22, 'de loco superiore.'

ad talos] "Alia respondendi patronis ratio; et aliquando tamen eorum non oratio modo, sed vita etiam, vultus, denique incessus, habitus, recte incusari solet, ut adversus Quintium Cicero non haec solum, sed ipsam etiam praetextam demissam ad talos insectatus est" (Quintilian, Inst. v. 13). Manutius and some others have taken this passage to prove that the Tribuni wore the Praetexta, though Plutarch says that they did not. But this passage proves that Quintius took the Praetexta, when he was raised to a higher place. Cicero afterwards calls him a 'novus homo,' a term only applied to a man who had obtained a curule office, and was the first of his family who had obtained it.

ignobili loco natus ita vivit ut nobilitatis dignitatem virtute tueri posse videatur, usque eo pervenit quoad eum industria cum innocentia prosecuta est. Si quis autem hoc uno nititur quod sit ignobilis, procedit saepe longius quam si idem ille esset cum iisdem suis vitiis nobilissimus. Ut Quintius, nihil enim dicam de ceteris, si fuisset homo nobilis, quis eum cum illa superbia atque intolerantia ferre potuisset? Quod eo loco fuit, ita tulerunt ut, si quid haberet a natura boni, prodesse ei putarent oportere, superbiam autem atque arrogantiam ejus deridendam magis arbitrarentur propter humilitatem hominis quam pertimescendam. XLI. Sed ut illuc revertar, quo tempore Fidiculanius est absolutus, tu, qui judicia facta commemoras, quid tum esse existimas judicatum? certe gratis judicasse. At condemnarat; at caussam totam non audierat; at in contionibus [omnibus] a L. Quintio vehementer erat et saepe vexatus.—Illa igitur omnia Quintiana iniqua, falsa, turbulenta, popularia, seditiosa judicia fuerunt. Esto: potuit esse innocens Falcula. Jam ergo aliquis Oppianicum gratis condemnavit: jam non eos Junius subsortitus est qui pecunia accepta condemnarent; jam potuit aliquis ab initio non sedisse et tamen Oppianicum gratis condemnasse. Verum, si innocens Falcula, quaero, quis sit nocens? si hic gratis condemnavit, quis accepit? Nego rem esse ullam in quemquam illorum objectam quae Fidiculanio non objecta sit, aliquid fuisse in Fidiculanii caussa quod idem non esset in ceterorum. Aut hoc judicium reprehendas tu, cujus accusatio rebus judicatis nitebatur, necesse est, aut, si hoc verum esse concedis, Oppianicum gratis condemnatum esse fateare.

Cicero in another place speaks of the difficulties of the 'novi homines' in rising, and the contempt that the old 'nobiles' showed towards them (Vol. I. Verr. ii. 3. c. 4; and 5. c. 70). He had said of himself: "I cannot do what those can who are born of noble race, on whom while they are sleeping all the honours of the Roman people are conferred." Here he says something else, when it suits his purpose. He was now Praetor; he was beginning to have more sympathy with the 'men of noble race;' for though he could never be of noble race himself, his son could. There were as many opportunities for a man rising to high station in Rome, as in any other country, ancient or modern. The two arts by which a man might rise were military talent and eloquence; and there were always opportunities, for there was always war somewhere, and there was always the popular assembly to address, and the courts. Yet the history of Rome proves that the high places in the state were generally held by the old families.

41. *gratis judicasse.*] 'That he got nothing for his vote on the trial.'—'At condemnarat,' &c.: this is the supposed answer of Attius. Cicero then says, 'Illa igitur omnia,' &c.: and Attius replies: 'Esto,' be it so; Falcula may have been innocent. This gives Cicero the opportunity of concluding: "Well then there was some one who gave a verdict against Oppianicus without a bribe."

nitebatur,] The reading of S. T. and Lambinus, who is followed by Classen and Baiter. Classen says of Lambinus: "h. l. ut saepius optimi nostri Codd. confirmant

This note is wrong; the only words of Attius are 'Esto; potuit esse innocens Falcula'. 'At condemnarat &c' are not the words of Attius but of Cicero.

Quamquam satis magno argumento esse debet, quod ex tam multis judicibus absoluto Falcula nemo reus factus est. Quid enim mihi damnatos ambitus colligitis, alia lege, certis criminibus, plurimis testibus? quum primum illi ipsi debuerint potius accusari de pecuniis repetundis quam ambitus. Nam si in ambitus judiciis hoc iis obfuit, quum alia lege caussam dicerent, certe, si propria lege hujus peccati adducti essent, multo plus obfuisset. Deinde, si tanta vis fuit istius criminis ut, qua quisque lege ex illis judicibus reus factus esset, tamen hac plaga periret, cur in tanta multitudine accusatorum, tantis praemiis, ceteri rei facti non sunt? Hic profertur id quod judicium appellari non oportet, P. Septimio Scaevolae litem eo nomine esse aestimatam. Cujus rei quae consuetudo sit, quoniam apud homines peritissimos dico, pluribus verbis docere non debeo. Numquam enim ea diligentia, quae solet adhiberi in ceteris judiciis, eadem reo damnato adhibita est. In litibus aestimandis fere judices, aut, quod sibi eum quem semel condemnarunt inimicum putant esse, si quae in eum lis capitis illata est, non admittunt, aut, quod se perfunctos jam esse arbitrantur quum de reo judicarunt, negligentius attendunt cetera. Itaque et majestatis absoluti sunt permulti, quibus damnatis de pecuniis repetundis lites majestatis

scripturam Lambini, qui persaepe etiam ubi fontem indicare supersedit, librorum auctoritatem sequitur." Classen has a good opinion of Lambinus, which I state here, because I have elsewhere reported a bad opinion of him. Vol. I. Verr. ii. 1. c. 31, note.

hoc his obfuit,] The having received money at the trial of Oppianicus, or rather the being supposed to have received it.— 'tantis praemiis:' this refers to the rewards given to those who successfully prosecuted a man for Repetundae. See Vol. I. Divin. c. 7, note on 'quadruplatores.'

P. Septimio] His case is mentioned in Vol. I. Verr. Act. i. c. 13, where the 'litis aestimatio' is explained. It appears that Repetundae included the offence of taking a bribe as a 'judex.' See also Vol. I. Excursus on the Formula Octaviana.

The words 'eo nomine' are explained by the passage in the Verrine orations: "Quid sit quod, P. Septimio senatore damnato, Q. Hortensio praetore, de pecuniis repetundis lis aestimata sit eo nomine quod ille ob rem judicandam pecuniam accepisset" (Verr. Act. 1. c. 13). It appears that the Lex Servilia and Acilia extended the notion of Repetundae to the receiving of a bribe by a 'judex' (Rein, Das Criminalrecht der Römer, p. 617).

Septimius was accused of something that he had done in Apulia, and convicted. When the damages were assessed, he was punished also, fined, for receiving a bribe on the trial of Oppianicus. But he had not been tried for receiving a bribe. He was convicted of one thing, and punished for what was not proved. This 'litis aestimatio' in the matter of the bribe was no Judicium, as Cicero shows.

lites majestatis essent] This word 'majestatis' is found only in S. T., and Classen has given good reasons for receiving it. It is an instructive example of the errors in many of the MSS. In this instance two MSS. only have preserved a word without which there would be no sense in the passage, and the whole argument of Cicero would be unintelligible.

It is probable that this passage may cause some difficulty; but it will be removed by considering that the 'litis aestimatio' was the fixing of the mulct or damages, which 'aestimatio' followed a 'judicium;' that this 'aestimatio' might be made either severely or loosely; and that a penalty or mulct might be fixed at a lower rate than

essent aestimatae, et hoc quotidie fieri videmus ut, reo damnato de pecuniis repetundis, ad quos pervenisse pecunias in litibus aestimandis statutum sit, eosdem judices absolvant; quod quum fit, non judicia rescinduntur, sed hoc statuitur, aestimationem litium non esse judicium. Scaevola condemnatus est aliis criminibus, frequentissimis Apuliae testibus. Omni contentione pugnatum est ut lis haec capitis aestimaretur. Quae res si rei judicatae pondus habuisset, ille postea vel iisdem vel aliis inimicis reus hac lege ipsa factus esset.

XLII. Sequitur id quod illi judicium appellant, majores autem nostri numquam neque judicium nominarunt, neque proinde ut rem judicatam observaverunt, animadversionem atque auctoritatem censoriam. Qua de re antequam dicere incipio, perpauca mihi de meo officio verba faciunda sunt, ut a me quum hujusce periculi, tum ceterorum quoque officiorum et amicitiarum ratio conservata esse videatur. Nam mihi cum viris fortibus, qui censores proxime fuerunt, ambobus est amicitia; cum altero vero sicuti plerique vestrum sciunt, magnus usus et summa utriusque officiis constituta con-

the strict Lex allowed. Cicero accordingly says: "In fixing the damages the 'judices' for the most part, either because they consider a man whom they have once condemned as an enemy, if any capital charge (lis capitis) has been brought against him, do not allow (it to be considered), or because they think that they have done their duty, when they have sat in judgment on an accused person, attend less carefully to the rest." There is no difficulty here except in the words 'inimicum putant esse' which Manutius correctly explains thus: "ideo litem non admittunt in eum illatam, ne videantur propter inimicitias infensi." The following sentence of Cicero will now be clear: "Accordingly both many persons have been acquitted of the charge of Majestas, in whose case after a conviction for Repetundae the damages had been assessed as if they had been convicted of 'majestas;' and we see this happen daily, that when a man has been convicted of Repetundae, the 'judices' acquit even those to whose hands it has been shown in the fixing of the damages that the money came." Cicero's conclusion is that if this be done, the 'aestimatio litis' cannot be called a 'judicium;' which is quite true.

The conclusion of the chapter is rather obscure. "Scaevola was convicted on other charges;" that is, not on the charge of receiving a bribe, though he was punished for that (litem eo nomine esse aestimatam). The difficulty is in 'lis haec capitis.' But the next sentence explains it: "and if this had had the weight of a 'Res judicata,' of a judgment, Scaevola would afterwards have been charged under this very Lex (de Repetundis) either by the same or by other enemies." 'Quae res' refers to 'lis haec,' and, as the 'quae res' is the 'aestimatio,' which was not a 'judicium,' and as the 'aestimatio' was 'eo nomine' &c. it is plain that 'lis haec' is the matter of having received a bribe: "every effort was made (he does not say by whom) that this matter of trial (lis), which was a 'lis capitalis,' should be the ground on which the damages were assessed."

42. *proinde ut*] S. T. F. M.: the other reading is 'perinde;' which I note on account of the word 'proinde,' for it is very doubtful if 'perinde' is a genuine form. In the MSS. we find both forms.

officiis—consuetudo] The only MSS. reading is 'officii.' The correction is by P. Manutius. 'Consuetudo' is the reading of S. T.: the other reading is 'necessitudo,' which Baiter has. The censors were Cn. Lentulus and P. Gellius.

suetudo. Quare quidquid de subscriptionibus eorum mihi dicendum erit, eo dicam animo ut omnem orationem meam non de illorum facto, sed de ratione censoria habitam existimari velim: a Lentulo autem, familiari meo, qui a me pro eximia sua virtute summisque honoribus quos a populo Romano adeptus est, honoris caussa nominatur, facile hoc, judices, impetrabo ut, quam ipse adhibere consuevit in amicorum periculis quum fidem et diligentiam, tum vim animi libertatemque dicendi, ex hac mihi concedat ut tantum mihi sumam quantum sine hujus periculo praeterire non possim. A me tamen, ut aequum est, omnia caute pedetentimque dicentur, ut neque fides hujus defensionis relicta, neque cujusquam aut dignitas laesa aut amicitia violata esse videatur.

Video igitur, judices, animadvertisse censores in judices quosdam illius consilii Juniani, quum istam ipsam caussam subscriberent. Hic illud primum commune proponam, numquam animadversionibus censoriis hanc civitatem ita contentam ut rebus judicatis fuisse. Neque in re nota consumam tempus. Exempli caussa ponam illud unum: C. Getam, quum a L. Metello et Cn. Domitio censoribus ex senatu ejectus esset, censorem esse ipsum postea factum; et cujus mores a censoribus erant reprehensi, hunc postea et populi Romani et eorum qui in ipsum animadverterant moribus praefuisse. Quod si illud judicium putaretur, ut ceteri turpi judicio damnati in perpetuum omni honore ac dignitate privantur, sic hominibus ignominia notatis neque ad honorem aditus neque in curiam reditus esset. Nunc si quem Cn. Lentuli aut L. Gellii libertus furti condemnarit, is omnibus ornamentis amissis numquam ullam honestatis suae partem recuperabit; quos autem ipse L. Gellius et Cn. Lentulus, duo censores, clarissimi viri, sapientissimique homines, furti et captarum pecuniarum nomine notaverunt, ii non modo in senatum redierunt,

subscriberent.] The censors swore to exercise their office honestly. They were also required to give the reason in the censorial registers of the Ignominia, which they inflicted on a man by their judgment. This was the 'subscriptio censoria;' as Livy (xxxix. 42) expresses it; "Patrum memoria institutum fertur, ut censores motis senatu adscriberent notas."

The censors were not bound to investigate charges; they might act on common report (c. 45), and if opinion had condemned a man, they could condemn him too. But the Nota of one censor could be destroyed by the opposition of a colleague, or by the succeeding censors, or by the decision of the 'judices' in a 'judicium,' or by any decree of the 'populus.' The censorian Ignominia was therefore not perpetual, and in this it differed entirely from Infamia, which continued for a man's life (Savigny, System, &c. ii. p. 197). This is what Cicero expresses by 'turpi judicio damnati privantur.' The consequences of condemnation in a 'turpe judicium' were Infamia, which was perpetual. See Pro Caecina, c. 3.

Exempli caussa ponam] S.T. Classen has with the other MSS.: 'Consumam tempus exemplis. Ponam &c.;' which is at least as good.

sed etiam illarum ipsarum rerum judiciis absoluti sunt. XLIII. Neminem voluerunt majores nostri non modo de existimatione cujusquam, sed ne pecuniaria quidem de re minima esse judicem, nisi qui inter adversarios convenisset. Quapropter in omnibus legibus, quibus exceptum est de quibus caussis aut magistratum capere non liceat aut judicem legi aut alterum accusare, haec ignominiae caussa praetermissa est. Timoris enim caussam, non vitae poenam in illa potestate esse voluerunt. Itaque non solum, judices, illud ostendam quod jam videtis, populi Romani suffragiis saepenumero censorias subscriptiones esse sublatas, verum etiam judiciis eorum qui jurati statuere majore cum religione et diligentia debuerunt. Primum judices, senatores equitesque Romani in compluribus jam reis, quos contra leges pecunias accepisse subscriptum est, suae potius religioni quam censorum opinioni paruerunt. Deinde praetores urbani, qui jurati debent optimum quemque in selectos judices referre, sibi numquam ad eam rem censoriam ignominiam impedimento esse oportere duxerunt. Censores denique ipsi saepenumero superiorum censorum judiciis, si ista judicia appellare vultis, non steterunt. Atque etiam ipsi inter se censores sua judicia tanti esse arbitrantur ut alter alterius judicium non modo reprehendat, sed etiam rescindat; ut alter de senatu movere velit, alter retineat et ordine amplissimo dignum existimet; ut alter in aerarios referri aut tribu moveri jubeat, alter vetet. Quare qui vobis in mentem

43. *judicem, nisi qui*] See Vol. I. Excursus, Judicia. The parties in a private suit originally agreed about the 'judex.' The plaintiff proposed one, and the Magistratus appointed him, if the defendant made no objection (Cic. De Or. ii. 70; Vol. I. Verr. ii. 3. c. 60, note). Cicero adds that in all the Leges which prevent a man from holding a magistracy (magistratum capere), or being a 'judex,' or a prosecutor (alterum accusare), the Ignominia inflicted by the censors is not mentioned as a reason for incapacity. The old Romans intended the power with which the censors were invested to be a terror to the bad, and not a power over men's lives. The words 'in omnibus legibus quibus exceptum est' refer to provisions in any Lex by which certain persons were placed under political disabilities. This was done both by Leges and by the Praetor's Edicts, as we see in the Digest 3. tit. 1. De Postulando; and tit. 2. De his qui Infamia notantur.

senatores equitesque Romani] After the enactment of the Lex Aurelia B.C. 70, both the Senators and the Equites were eligible to the office of Judex in the Quaestiones.

Cicero says that many persons who had been marked with Ignominia by the censors for having taken money illegally had been acquitted on trial. The reading 'pecunias accepisse' is in S. T.; but the other reading 'pecunias cepisse' is also Latin. See Vol. I. Verr. i. 1. c. 4: 'contra leges pecunias cepisse,' and ii. 3. c. 30.

selectos judices] The album of the Judices. See Excursus, Judicia, Vol. I. Classen and Baiter have 'lectos judices,' following S.T.

in aerarios &c.] This is an instance of the power of the censors, to degrade a man from one 'tribus' to a lower, and to place him among the Aerarii; of which we have a signal example in Livy (xxiv. 43). See also xxiv. 18; iv. 24.

It is no where said who the Aerarii were. Becker (Handbuch, &c. ii. 1. p. 183) has collected the opinions of several modern writers. The Aerarii were not in any 'tribus;' they were excluded from the 'suffragium et honores.' 'Tribu moveri' and

venit haec appellare judicia, quae a populo rescindi, ab juratis judicibus repudiari, a magistratibus negligi, ab iis qui eandem potestatem adepti sunt commutari, inter collegas discrepare videatis?

XLIV. Quae quum ita sint, videamus quid tandem censores de illo judicio corrupto judicasse dicantur. Ac primum illud statuamus, utrum quia censores subscripserint ita sit, an quia ita fuerit illi subscripserint. Si [ideo] quia subscripserint, videte quid agatis, ne in unum quemque nostrum censoribus in posterum potestatem regiam permittatis; ne subscriptio censoria non minus calamitatis civibus quam illa acerbissima proscriptio possit afferre; ne censorium stilum, cujus mucronem multis remediis majores nostri retuderunt, aeque posthac atque illum dictatorium [gladium] pertimescamus. Sin autem quod subscriptum est, quia verum est, idcirco grave debet esse, hoc quaeramus, verum sit an falsum; removeantur auctoritates censoriae: tollatur id ex caussa quod in caussa non est: doce quam pecuniam Cluentius dederit, unde dederit, quemadmodum dederit; unum denique aliquod a Cluentio profectae pecuniae vestigium ostende. Vince deinde bonum virum fuisse Oppianicum, hominem integrum, nihil de illo umquam secus esse existimatum, nihil denique praejudicatum. Tum auctoritatem censoriam amplexato; tum illorum judicium cum re conjunctum esse defendito. Dum vero eum fuisse Oppianicum constabit qui tabulas publicas municipii manu sua corrupisse judicatus sit; qui testamentum interleverit; qui supposita persona falsum testamentum obsignandum curarit; qui eum cujus nomine id obsignatum est interfecerit; qui avunculum filii sui in servitute ac vinculis necaverit; qui municipes suos proscribendos occidendosque curaverit; qui ejus uxorem quem occiderat in matrimonium duxerit; qui pecuniam pro abortione dederit; qui socrum, qui uxores, qui uno tempore fratris uxorem, speratosque liberos, fratremque ipsum, qui denique suos liberos interfecerit; qui, quum venenum privigno suo dare vellet, manifesto deprehensus sit; cujus ministris consciisque damnatis, ipse adductus in judicium pecuniam judici dederit ad sententias judicum corrumpendas; dum haec, inquam, de Oppianico constabunt, neque ullo argumento Cluentianae pecuniae crimen tenebitur, quid est quod te

'aerarium facere' are different; for 'tribu moveri' is merely a removal from one 'tribus' to another, as from the Rusticae to the Urbanae tribus.

44. *quod in caussa non est:*] That is, the judgment of the censors, which is no way connected with the present case.—'abortione:' the other reading is 'potione.'—'dare vellet,' S. T.: the other reading is 'quaereret.'

ista censoria sive voluntas sive opinio fuit, adjuvare aut hunc innocentem opprimere posse videatur? XLV. Quid igitur censores secuti sunt? ne ipsi quidem, ut gravissime dicam, quidquam aliud dicent praeter sermonem atque famam. Nihil se testibus, nihil tabulis, nihil aliquo gravi argumento comperisse, nihil denique caussa cognita statuisse dicent. Quod si ita fecissent, tamen id non ita fixum esse deberet ut convelli non liceret. Non utar exemplorum copia quae summa est, non rem veterem, non hominem potentem aliquem aut gratiosum proferam. Nuper hominem tenuem, scribam aedilicium, D. Matrinium, quum defendissem apud M. Junium, Q. Publicium praetores, et M. Plaetorium, C. Flaminium aediles curules, persuasi ut scribam jurati legerent eum quem iidem isti censores aerarium reliquisse subscripserunt. Quum enim in homine nulla culpa inveniretur, quid ille meruisset, non quid de eo statutum esset, quaerendum esse duxerunt. Nam haec quidem, quae de judicio corrupto subscripserunt, quis est qui ab illis satis cognita et diligenter judicata arbitretur? In M'. Aquillium et in Ti. Guttam video esse subscriptum. Quid est hoc? duos esse corruptos solos pecunia dicant. Ceteri videlicet gratis condemnarunt. Non est igitur circumventus, non oppressus pecunia, non, ut illae Quintianae contiones habebantur, omnes qui Oppianicum condemnarunt in culpa sunt ac suspicione ponendi. Duos solos video auctoritate censorum affines ei turpitudini judicari. Aut illud afferant, aliquid sese, quod de his duobus habuerint compertum, de ceteris comperisse. XLVI. Nam illud quidem minime probandum est, ad notationes auctoritatemque censoriam exemplum illos a consuetudine militari transtulisse. Statuerunt enim ita majores nostri ut, si a multis

45. *scribam aedilicium,*] See Vol. I. Verr. ii. 3. c. 79, note on the 'scribae.' We collect from this passage that the Magistratus, the Aediles Curules, and the Praetors, had the power of naming persons to be 'scribae,' or of admitting them to the class. Graevius says that the "censors could not remove a 'scriba' from the 'ordo' as they could remove a man from the Senate, or remove him from his tribe, and take away an 'equus publicus,' but they could remove from the Album of the Scribae those Scribae who had been noted by the Censores."

F. Ursini remarks that the name of M. Plaetorius appears on the silver denarii of the Plaetorii with the title of AED. CVR.

pecunia dicant. Ceteri] Many of the editors have omitted 'dicant,' which is in nearly all the MSS.; and they have followed the Juntina in inserting 'quid' between 'dicant' and 'Ceteri.' Baiter points the passage differently from Classen. I leave this to the reader.—'affines:' see Vol. I. Verr. ii. 2. c. 38: but 'affines' in that passage has a genitive.

aliquid sese,] 'Sese' is an emendation of Leclerc for 'esse.' Some of the editors have placed 'non' before 'comperisse' without authority, and contrary to the sense. One fruitful cause of bad emendations is the misunderstanding of an author. Cicero asks the censors to show that they had discovered about the rest what they had discovered about the two.

esset flagitium rei militaris admissum, sortitione in quosdam animadverteretur; ut metus videlicet ad omnes, poena ad paucos perveniret. Quod idem facere censores in delectu dignitatis et in judicio civium et in animadversione vitiorum qui convenit? Nam miles, qui locum non tenuit, qui hostium impetum vimque pertimuit, potest idem postea et miles esse melior et vir bonus et civis utilis. Quare qui in bello propter hostium metum deliquerat, amplior ei mortis et supplicii metus est a majoribus constitutus; ne autem nimium multi poenam capitis subirent, idcirco illa sortitio comparata est. Hoc tu idem facies, censor, in senatu legendo? Si erunt plures qui ob innocentem condemnandum pecuniam acceperint, tu non animadvertes in omnes, sed carpes ut velis, et paucos ex multis ad ignominiam sortiere? Habebit igitur te sciente et vidente curia senatorem, populus Romanus judicem, res publica civem sine ignominia quemquam, qui ad perniciem innocentis fidem suam et religionem pecunia commutarit? et, qui pretio adductus eripuerit patriam, fortunas, liberos civi innocenti, is censoriae severitatis nota non inuretur? Tu es praefectus moribus, tu magister veteris disciplinae ac severitatis, si aut retines quemquam sciens in senatu scelere tanto contaminatum, aut statuis, qui in eadem culpa sit, non eadem poena affici convenire? aut quam conditionem supplicii majores in bello timiditati militis propositam esse voluerunt, eandem tu in pace constitues improbitati senatoris? Quod si hoc exemplum ex re militari ad animadversionem censoriam transferendum fuit, sortitione id ipsum factum esse oportuit. Sin autem sortiri ad poenam et hominum delictum fortunae judicio committere minime censorium est, certe in multorum peccato carpi paucos ad ignominiam et tur-

46. *sortitione*] 'sortito,' Classen. We have in the Verrines, ii. 2. c. 51: "Syracusis lex est de religione quae in annos singulos Jovis sacerdotem sortito capi jubeat." This 'sortitio' or lot-casting was used for the purpose generally of taking every tenth man to punish him. Crassus did this in the Servile war (Plutarch, Crassus, c. 10): "five hundred who had been the first to run, and had shown most cowardice, he distributed into fifty decades, and out of each decade he took one man by lot and put him to death; thus inflicting on the soldiers this ancient mode of punishment, which had long fallen into disuse." Compare Appian, B. C. i. 118. There is an example of Decimatio in Livy, ii. 59.

Quare qui—deliquerat,] Classen restored this from S. T. The old reading is 'Quare ne in bello—delinqueret,' &c. Classen observes that the old reading presented to us a person already known, and this is no other than "miles, qui locum non tenuit," &c.; and this is very ridiculous, as any body may see. By the alteration, he adds, we have got what we wanted, a new personage, who is aptly defined.

convenire? aut quam] Most of the MSS. have the two infinitives, 'oportere convenire;' and though the two are not tolerable, says Classen, he thinks there must be some cause or reason for them; and so he writes, 'affici oportere? Conventine ut quam conditionem —constituas,' &c. He thinks that 'convenitne' became 'convenire' through the blunder of the yawning copyists. It is possible.

pitudinem non oportet. XLVII. Verum omnes intelligimus in istis subscriptionibus ventum quendam popularem esse quaesitum. Jactata res erat in contione a tribuno seditioso: incognita caussa probatum illud erat multitudini: nemini licitum est contra dicere: nemo denique ut defenderet contrariam partem laborabat. In invidiam porro magnam illa judicia venerant. Etenim paucis postea mensibus alia vehemens erat in judiciis ex notatione tabellarum invidia versata. Praetermitti a censoribus et negligi macula judiciorum posse non videbatur. Homines, quos ceteris vitiis atque omni dedecore infames videbant, eos hac quoque subscriptione notare voluerunt, et eo magis quod illo ipso tempore, illis censoribus, erant judicia cum equestri ordine communicata, ut viderentur per hominum idoneorum ignominiam sua auctoritate illa judicia reprehendisse. Quod si hanc apud eosdem ipsos censores mihi aut alii caussam agere licuisset, hominibus tali prudentia certe probavissem, res enim indicat nihil ipsos habuisse cogniti, nihil comperti; ex tota ista subscriptione rumorem quendam et plausum popularem esse quaesitum. Nam in P. Popillium, qui Oppianicum condemnarat, subscripsit L. Gellius, quod is pecuniam accepisset quo innocentem condemnaret. Jam id ipsum quantae divinationis est scire innocentem fuisse reum, quem fortasse numquam viderat, quum homines sapientissimi, judices, ut nihil dicam de iis qui condemnarunt, caussa cognita, sibi dixerint non liquere?

Verum esto. Condemnat Popillium Gellius: judicat accepisse a Cluentio pecuniam. Negat hoc Lentulus. Nam Popillium, quod

47. *ventum—popularem*] This is the 'popularis aura' of Horace, Carm. iii. 2. 19.—'nemini licitum:' this is the conjecture of A. Augustinus, which has since been confirmed by P. The corrupt reading 'multitudinem illicitum' is instructive, as Classen explains it. The *nem* of 'nemini' got attached to 'multitudini,' and the remainder *ini* was joined to 'licitum,' and so 'illicitum' was produced.

notatione tabellarum] The marking of the ballot tablets. See Vol. I. Divin. c. 7.—'cum equestri ordine:' in their censorship, B.C. 70, in the consulship of Pompeius and Crassus. The Lex Aurelia had made the 'equites' eligible to the office of Judex. The 'illa judicia venerant' mentioned a little before are the Judicia, when the Senators only were judges. The 'illa judicia reprehendisse' seem to be the same Judicia. As the Judicia were now open to the Equites, the censors thought this a good opportunity of satisfying public opinion about the past trials by marking some of the former Senatorian Judices.

All the MSS. except P., have 'judicia cum equestri ordine reprehendisse.' Manutius explains 'cum equestri ordine' thus: "simul cum equestri ordine illa judicia reprehendente, ut legem de communicandis judiciis necessariam fuisse ostenderet." This may be the meaning; but it seems likely that 'cum equestri ordine' is an interpolation. Classen says that the words cannot be understood.—'prudentia praeditis:' Baiter.

Nam Popillium,] Lentulus did not admit that Popillius had received a bribe; for though he did not allow him to be in the Senate, because he was the son of a freedman, he allowed him to have a Senator's place at the Ludi, and allowed him to wear the senatorial dress.

erat libertini filius, in senatum non legit; locum quidem senatorium ludis et cetera ornamenta relinquit, et eum omni ignominia liberat. Quod quum facit, judicat ejus sententia gratis esse Oppianicum condemnatum. Et eundem Popillium postea Lentulus in ambitus judicio pro testimonio diligentissime laudat. Quare si neque L. Gellii judicio stetit Lentulus, neque Lentuli existimatione contentus fuit Gellius, et si uterque censor censoris opinione standum non putavit, quid est quamobrem quisquam nostrum censorias subscriptiones omnes fixas et in perpetuum ratas putet esse oportere?

XLVIII. At in ipsum Habitum animadverterunt. Nullam quidem ob turpitudinem, nullum ob totius vitae, non dicam vitium, sed erratum: Neque enim hoc homine sanctior neque probior neque in omnibus officiis retinendis diligentior esse quisquam potest; neque illi aliter dicunt, sed eandem illam famam judicii corrupti secuti sunt; neque ipsi secus existimant quam nos existimari volumus de hujus pudore, integritate, virtute; sed putarunt praetermitti accusatorem non potuisse quum animadversum esset in judices. Qua de re tota si unum factum ex omni antiquitate protulero, plura non dicam. Non enim mihi exemplum summi et clarissimi viri, P. Africani, praetereundum videtur; qui quum esset censor, et in equitum censu C. Licinius Sacerdos prodisset, clara voce ut omnis contio audire posset; dixit se scire illum verbis conceptis pejerasse; si quis contra vellet dicere, usurum esse eum suo testimonio; deinde quum nemo contra diceret, jussit equum traducere. Ita is, cujus arbitrio et populus Romanus et exterae gentes contentae esse consueverant, ipse sua scientia ad ignominiam alterius contentus non fuit. Quod si hoc Habito facere licuisset, facile illis ipsis

48. *P. Africani,*] This is a story about the younger Africanus. Plutarch (Pomp. 22) has a story which explains the matter about the horse: "It is the custom among the Roman Equites, when they have served the time fixed by law, to lead their horse into the Forum before the two men whom they call censors, and after mentioning each general and Imperator under whom they have served, and giving an account of their service, they receive their dismissal." The censors on this occasion were Gellius and Lentulus.

verbis conceptis] 'Verba concepta' are a set form of words. Cicero (De Off. iii. 29) explains it and 'perjurium:' "Non enim falsum jurare perjurare est; sed quod ex animi tui sententia juraris, sicut verbis concipitur more nostro, id non facere perjurium est."—'contra vellet dicere:' this is the order of S. T., and better than 'dicere vellet,' for it means, if any one wished to speak against Sacerdos, he might have the censor as a witness. Quintilian (Inst. v. 11. 13) explains it: "testimonium etiam pollicitus, si quis contra diceret, nullo accusante traducere equum passus est." 'Traducere equum' is the form in which the censor told the man to go on: he had passed muster. The censor said 'Traduc equum,' if he had nothing against the Eques. Ovid (Tristia ii. 541):

'Carminaque edideram, quum te delicta notantem
Praeterii toties jure quietus eques."

hoc Habito facere] The word 'facere'

judicibus et falsae suspicioni et invidiae populariter excitatae restitisset.

Unum etiam est quod me maxime perturbat, cui loco respondere vix videor posse, quod elogium recitasti de testamento Cn. Egnatii patris, hominis honestissimi videlicet et sapientissimi; idcirco se exheredasse filium quod is ob Oppianici condemnationem pecuniam accepisset. De cujus hominis levitate et inconstantia plura non dicam. Hoc testamentum ipsum, quod recitas, ejusmodi est ut ille, quum eum filium exheredaret quem oderat, ei filio coheredes homines alienissimos adjungeret quem diligebat. Sed tu, Atti, consideres censeo diligenter, utrum censorum judicium grave velis esse an Egnatii. Si Egnatii, leve est quod censores de ceteris subscripserunt; ipsum enim Cn. Egnatium, quem tu gravem esse vis, ex senatu ejecerunt: sin autem censorum, hunc Egnatium, quem pater ~~censoria subscriptione~~ exheredavit, censores in senatu quum patrem ejicerent retinuerunt.

XLIX. At enim senatus universus judicavit illud corruptum esse judicium. Quomodo? Suscepit caussam. An potuit rem delatam ejusmodi repudiare? quum tribunus plebis populo concitato rem paene ad manus revocasset, quum vir optimus et homo innocentissimus pecunia circumventus diceretur, quum invidia flagraret ordo senatorius, potuit nihil decerni? potuit illa concitatio multitudinis sine summo periculo rei publicae repudiari? At quid est decretum? quam juste! quam sapienter! quam diligenter! SI QUI SUNT QUORUM OPERA FACTUM SIT UT JUDICIUM PUBLICUM CORRUMPERETUR. Utrum videtur id senatus factum judicare an si factum sit moleste graviterque ferre? Si ipse A. Cluentius sententiam de judiciis rogaretur, aliam non diceret atque ii dixerunt quorum sententiis Cluentium condemnatum esse dicitis. Sed quaero a vobis, num istam legem ex isto senatus consulto L. Lucullus consul, homo sapientissimus, tulerit; num anno post M. Lucullus et C. Cassius, in quos tum consules designatos idem illud senatus

does not seem the right word, and some of the old commentators have misunderstood it. Cicero means, if Habitus could have been treated like Sacerdos, the censors would not have fixed their 'nota' on him. Manutius explains it: "ut eadem condicione qua Sacerdos uteretur, ne scilicet in eum sine teste aliquo animadverteretur," which is the meaning.

Unum etiam est] This is said ironically, as appears from what follows. 'Elogium,' a Greek word, is said to mean a brief statement of any fact or opinion. Cicero (De Sen. c. 20) says: "Solonis quidem sapientis elogium est, quo se negat velle suam mortem dolore amicorum et lamentis vacare."

49. *in quos tum*] 'For whom,' that is, to whom the 'senatusconsultum' was addressed, as well as to the consuls then in office. The false reading 'decreverit' was corrected by Lambinus, and it is the reading of S. T. Yet 'decreverit' still stands

decreverat? Non tulerunt: et quod tu Habiti pecunia factum esse arguis neque id ulla tenuissima suspicione confirmas, factum est primum illorum aequitate et sapientia consulum ut id quod senatus decreverat ad illud invidiae praesens incendium restinguendum, id postea referendum ad populum non arbitrarentur. Ipse deinde populus Romanus, qui L. Quintii tribuni plebis fictis querimoniis antea concitatus rem illam et rogationem flagitarat, idem C. Junii filii, pueri parvuli, lacrimis commotus, maximo clamore et concursu totam quaestionem illam et legem repudiavit. Ex quo intelligi potuit id quod saepe dictum est: ut mare, quod natura sua tranquillum sit, ventorum vi agitari atque turbari, sic populum Romanum sua sponte esse placatum, hominum seditiosorum vocibus ut violentissimis tempestatibus concitari.

L. Est etiam reliqua permagna auctoritas, quam ego turpiter paene praeterii; mea enim esse dicitur. Recitavit ex oratione nescio qua Attius, quam meam esse dicebat, cohortationem quandam judicum ad honeste judicandum, et commemorationem quum aliorum judiciorum, quae probata non essent, tum illius ipsius judicii Juniani; proinde quasi ego non ab initio hujus defensionis dixerim, invidiosum illud judicium fuisse; aut, quum de infamia judiciorum disputarem, potuerim illud quod tam populare esset illo tempore praeterire. Ego vero, si quid ejusmodi dixi, neque cognitum commemoravi neque pro testimonio dixi: et illa oratio potius temporis mei quam judicii et auctoritatis fuit. Quum enim accusarem et mihi initio

in texts of Cicero printed within a few years, a signal instance of the carelessness of editors.

Here is an example of a 'senatusconsultum' which the consuls neglected, though they ought pursuant to it to have proposed a Lex to the people. Some of the editors have objected to 'referendum,' which is not the common word on this occasion. The word is 'ferre.' F. M. have 'perferendum.'

50. *Est etiam*] He is speaking ironically again. The words 'recitavit ex oratione' allude to a passage in the Verrine orations, Act. i. c. 13. We may perhaps infer that the Verrine orations were circulated extensively at this time, published,—as we call it,—though he says afterwards (c. 50) that people could recollect what a man had said or done without having the record of it in writing. There is an instance in c. 51 of two speeches of L. Crassus being published, for the opponent of Crassus had copies of both of them. It appears that the orators themselves wrote them out and got them circulated. M. Antonius (c. 50) never wrote out any of his speeches. But perhaps others did it for him from the notes of the shorthand-writers. —'tum aliorum:' this is Ernesti's emendation. The MSS. have 'tum illorum.'—'proinde quasi:' S.T. F. M. There is also a reading 'perinde quasi.'—'temporis mei:' this is like 'temporis caussa,' for the occasion. He explains himself further on: "omnes enim illae orationes caussarum ac temporum sunt, non hominum ipsorum aut patronorum." What he says is true. Such speeches are speeches on the case and for the occasion; they are not the language of the men or of the advocates. The advocate says what he can derive from the facts and the case. But if Cicero does not always give his real judgment, and only makes the best of his case, as he says here, we have good reason for giving no credit to some things that he says, when we have evidence to oppose to what he says.

proposuissem, ut animos et populi Romani et judicum commoverem, quumque omnes offensiones judiciorum non ex mea opinione sed ex hominum rumore proferrem, istam rem, quae tam populariter esset agitata, praeterire non potui. Sed errat vehementer, si quis in orationibus nostris quas in judiciis habuimus, auctoritates nostras consignatas se habere arbitratur. Omnes enim illae [orationes] caussarum ac temporum sunt, non hominum ipsorum aut patronorum. Nam si caussae ipsae pro se loqui possent, nemo adhiberet oratorem. Nunc adhibemur ut ea dicamus, non quae auctoritate nostra constituantur, sed quae ex re ipsa caussaque ducantur. Hominem ingeniosum, M. Antonium, aiunt solitum esse dicere, Idcirco se nullam umquam orationem scripsisse ut, si quid aliquando non opus esset ab se esse dictum, posset negare dixisse: proinde quasi, si quid a nobis dictum aut actum sit, id nisi litteris mandaverimus hominum memoria non comprehendatur. LI. Ego vero in isto genere libentius quum multorum, tum hominis eloquentissimi et sapientissimi, L. Crassi auctoritatem sequor, qui quum C. Plancum defenderet, accusante M. Bruto, homine in dicendo vehementi et callido, quum Brutus duobus recitatoribus constitutis ex duabus ejus orationibus capita alterna inter se contraria recitanda curasset; quod in dissuasione rogationis ejus quae contra coloniam Narbonensem ferebatur, quantum potest de auctoritate senatus detrahit, in suasione legis Serviliae summis ornat senatum laudibus; et multa in equites Romanos quum ex ea oratione asperius dicta recitasset, quo animi illorum judicum in Crassum incenderentur, aliquantum esse commotus dicitur. Itaque in respondendo primum exposuit utriusque rationem temporis ut oratio ex re et caussa habita videretur: deinde, ut intelligere posset Brutus, quem hominem, et non solum qua eloquentia, verum etiam quo lepore et quibus facetiis

M. Antonium,] The great orator, who is one of the speakers in the De Oratore.

si quid—dictum] This is the MSS. reading. The common reading "si quid aliquando quod non opus esset ab se esset dictum," is the Juntine, and supposed to be a conjectural reading.

51. *C. Plancum*] Plancus is mentioned elsewhere (De Orat. ii. 54; Quintil. Inst. vi. 3). M. Junius Brutus was called the 'accusator' (De Off. ii. 14). Cicero says of him: "is magistratus non petivit, sed fuit accusator vehemens et molestus" (Brutus, c. 34). Crassus made a speech (B.C. 118) against the Lex that was proposed to prevent the settlement of the 'colonia Narbo,' as this passage states. Cicero mentions this again (Brutus, c. 43; De Orat. ii. 55). Crassus spoke in favour of the Lex Servilia Judiciaria (B.C. 106), which was proposed by the consul Q. Servilius Caepio (Brutus, c. 43, 44); and Cicero highly commends this speech. He makes a remark which will help to explain something that has been said before (Pro Fonteio, c. 9, note). He observes that there was more in the speech that was delivered than in the speech that was written, as we may see from some chapters, the matter of which is stated, but not fully expanded ("ex quibusdam capitibus expositis nec explicatis").

praeditum lacessisset, tres ipse excitavit recitatores cum singulis libellis, quos M. Brutus, pater illius accusatoris, de jure civili reliquit. Eorum initia quum recitarentur, ea quae vobis nota esse arbitror: FORTE EVENIT, UT RURI IN PRIVERNATI ESSEMUS, EGO ET BRUTUS FILIUS, fundum Privernatem flagitabat: IN ALBANO ERAMUS EGO ET BRUTUS FILIUS, Albanum poscebat: IN TIBURTE FORTE QUUM ASSEDISSEMUS EGO ET BRUTUS FILIUS, Tiburtem fundum requirebat: Brutum autem, hominem sapientem, quod filii nequitiam videret, quae praedia ei relinqueret, testificari voluisse dicebat; quod si potuisset honeste scribere, se in balneis cum id aetatis filio fuisse, non praeterisset; eas tamen ab eo balneas non ex libris patris, sed ex tabulis et ex censu quaerere. Crassus tum ita Brutum ultus est ut illum recitationis suae poeniteret. Moleste enim fortasse tulerat se in iis orationibus reprehensum, quas de re publica habuisset, in quibus forsitan magis requiratur constantia. Ego autem illa recitata esse non moleste fero. Neque enim ab illo tempore quod tum erat, neque ab ea caussa quae tum agebatur, aliena fuerunt; neque mihi quidquam oneris suscepi quum ista dixi, quo minus honeste hanc caussam et libere possem defendere. Quod si velim confiteri me caussam A. Cluentii nunc cognosse, antea fuisse in illa populari opinione, quis tandem id possit reprehendere? praesertim, judices, quum a vobis quoque ipsis hoc impetrari sit aequissimum, quod ego et ab initio petivi, et nunc peto, ut, si quam huc graviorem de illo judicio opinionem attulistis, hanc caussa perspecta atque omni veritate cognita deponatis.

LII. Nunc quoniam ad omnia quae abs te dicta sunt, T. Atti, de Oppianici damnatione respondi, confiteari necesse est te opinionem

Privernatem] He asked Brutus where it was. We must suppose that Brutus had sold his paternal estates. This Brutus the father left seven 'libelli' on Jus Civile, according to Pomponius (Dig. i. 2. 2. § 39). Cicero (De Or. ii. 55) speaks again of three books of Brutus the father; and he tells the same story that he has told here.

se in balneis] He could not have said, "in balneis eramus ego et Brutus filius," for that would not have been decent (De Officiis, i. 35). 'Id aetatis filio,' a son of such an age. 'Id aetatis' is a common expression in Cicero (Verr. ii. c. 37).—'ex tabulis et ex censu:' not the 'tabulae' of Brutus, though Manutius says so; but the 'tabulae' of the censors. Klotz thinks that the 'tabulae' are books which contain accounts of buying and selling, or the books of Brutus, in which his expenditure and receipts were entered.

huc graviorem] "huic, S. T., sed S. littera *i* expuncta," Baiter. Classen has 'huic graviorem,' and cannot understand 'huc' with 'gravior opinio:' he says that 'huic' is Cluentio. But Baiter compares "primum id, quod aequissimum est, ut ne quid huc praejudicati afferatis" (Pro Cluentio, c. 2). I don't see any difficulty in 'huc graviorem—opinionem.'

52. *damnatione respondi,*] Classen has put a comma after 'damnatione,' which, he says, he has never seen done before, and he has done it in order that we may see that 'ad omnia—respondi' are to be connected. He is quite right; but how can any man understand it differently?—'praesidio legis:' this is explained by what follows.

attm
ahos

multum fefellisse, quod existimaris me caussam A. Cluentii non facto ejus sed lege defensurum. Nam hoc persaepe dixisti tibi sic renuntiari, me habere in animo caussam hanc praesidio legis defendere. Itane est? ab amicis imprudentes videlicet prodimur; et est nescio quis de iis quos amicos nobis arbitramur qui nostra consilia ad adversarios deferat? Quisnam hoc tibi renuntiavit? quis tam improbus fuit? cui ego [autem] narravi? Nemo, ut opinor, in culpa est: sed nimirum tibi istud lex ipsa renuntiavit. Sed num tibi ita defendisse videor ut tota in caussa mentionem ullam legis fecerim? num secus hanc caussam defendisse ac si lege Habitus teneretur? Certe, ut hominem confirmare oportet, nullus est locus a me purgandi istius invidiosi criminis praetermissus. Quid ergo est? Quaeret fortassis quispiam, displiceatne mihi legum praesidio capitis periculum propulsare? Mihi vero, judices, non displicet, sed utor instituto meo. In hominis honesti prudentisque judicio non solum meo consilio uti consuevi, sed multum etiam ejus quem defendo et consilio et voluntati obtempero. Nam ut haec ad me caussa delata est, qui leges eas ad quas adhibemur et in quibus versamur nosse deberem, dixi Habito statim, eo capite, QUI COISSET QUO QUIS CONDEMNARETUR, illum esse liberum; teneri autem nostrum ordinem. Atque ille me orare atque obsecrare coepit ne se lege defenderem. Quum ego quae mihi videbantur dicerem, traduxit me ad suam sententiam. Affirmabat enim lacrimans non se cupidiorem esse civitatis retinendae quam existimationis. Morem homini gessi, et tamen idcirco feci, neque enim id semper facere debemus, quod videbam per se ipsam caussam sine lege copiosissime posse defendi. Videbam in hac defensione, qua jam sum usus, plus dignitatis, in illa, qua me hic uti noluit, minus laboris futurum. Quod si nihil aliud fuisset actum nisi ut hanc caussam obtineremus, lege recitata perorassem; LIII. neque me illa oratio commoveret quod

defendisse ac] The MSS. reading is 'defendissem;' but the best MSS. have 'ac' and not 'hac.' If 'ac' then is the true reading, we may safely write 'defendisse,' as P. Manutius did.

ut hominem] Sylvius says it is Cluentius. Manutius says it is the 'accusator.' It is neither of them. It is Cicero, who says: "It is true, as it is a man's duty to affirm, I have omitted no argument for clearing away that odious imputation." If this is not the meaning, I take Graevius' explanation, who says that he does not understand it.

ad quas adhibemur] This is explained by the words with which it is joined, 'et in quibus versamur.' Cicero says of Hortensius (Brutus, c. 88): "Hortensius igitur, quum admodum adolescens orsus esset in foro dicere, celeriter ad majores caussas adhiberi coeptus est." 'Adhibere' is to call in, to invite, to employ a person. There is a use of it in a like, though not quite the same, sense, in Verr. ii. 5, c. 27.

eo capite,] The words in this chapter of the Lex, 'Qui coisset,' &c. applied only to a senator who combined with any person to procure the conviction of another.

fuisset actum] S. T., Classen. Baiter has 'esset actum.' I have followed Classen

ait Attius, indignum esse facinus, si senator judicio quempiam circumvenerit, legibus eum teneri; si eques Romanus hoc idem fecerit, non teneri. Ut tibi concedam hoc indignum esse, quod cujusmodi sit jam videro, tu mihi concedas necesse est multo esse indignius in ea civitate, quae legibus contineatur, discedi a legibus. Hoc enim vinculum est hujus dignitatis qua fruimur in re publica, hoc fundamentum libertatis, hic fons aequitatis. Mens et animus et consilium et sententia civitatis posita est in legibus. Ut corpora nostra sine mente, sic civitas sine lege suis partibus, ut nervis ac sanguine et membris, uti non potest. Legum ministri magistratus, legum interpretes judices, legum denique idcirco omnes servi sumus ut liberi esse possimus. Quid est, Q. Naso, cur tu in isto loco sedeas? quae vis est qua abs te hi judices tali dignitate praediti coerceantur? Vos autem, judices, quamobrem ex tanta multitudine civium tam pauci de hominum fortunis sententiam fertis? quo jure Attius quae voluit dixit? Cur mihi tamdiu potestas dicendi datur? Quid sibi autem illi scribae, quid lictores, quid ceteri, quos apparere huic quaestioni video, volunt? Opinor haec omnia lege fieri, totumque hoc judicium, ut ante dixi, quasi mente quadam regi legis et administrari. Quid ergo? haec quaestio sola ita gubernatur? Quid M. Plaetorii et C. Flaminii inter sicarios? quid C. Orchivii peculatus? quid mea de pecuniis repetundis? quid C. Aquillii, apud quem nunc de ambitu caussa dicitur? quid reliquae quaestiones? Circumspicite omnes rei publicae partes: omnia legum imperio et praescripto fieri videbitis. Si quis apud me, T. Atti, te reum velit facere, clames te

in keeping 'commoveret' instead of 'commovet,' which Ernesti conjectured and P. has; and I have also followed Classen in connecting the beginning of c. 53 with the end of c. 52. The division into chapters and paragraphs is a great cause of confusion.

53. Q. *Naso,*] The Praetor, Cicero's colleague. It has generally been supposed that he is the same person as the Q. Voconius, the Judex Quaestionis, mentioned in c. 54. I do not see why this is assumed. The assumption ought to be that they are not the same person, for they are called by different names, though it is true that Q. Naso may have been Q. Voconius Naso, and Q. Voconius may have been Q. Voconius Naso. If it is asked, what the Praetor was doing here, I cannot say, further than this. I suppose he might be present, if he chose, and if this is the Praetor, he did choose to be present, and he had an appropriate place.—'Legum—servi sumus:' 'legibus—servimus,' Baiter.

apparere] Corresponding to this verb is the noun 'apparitores,' which signifies all the persons employed about a court, as it may be inferred from this passage, and as other passages show.

de ambitu] 'ambitus,' S. T., Classen, and this may be the better reading.

M. Plaetorius and the rest whom he mentions were Praetores. There were at this period eight Praetores annually chosen. Cicero here speaks of the different Quaestiones or matters for trial which were assigned to the several Praetores. Two Praetores are mentioned as presiding at trials of 'sicarii,' from which we conclude that these trials were numerous; for we do not suppose that two sat at one trial.

lege pecuniarum repetundarum non teneri; neque haec tua recusatio confessio sit captae pecuniae, sed laboris et periculi non legitimi declinatio. LIV. Nunc quid agatur et quid abs te juris constituatur vide. Jubet lex ea, qua lege haec quaestio constituta est, judicem quaestionis, hoc est Q. Voconium, cum iis judicibus qui ei obvenerint, (vos appellat, judices,) quaerere de veneno. In quem quaerere? infinitum est. QUICUMQUE FECERIT, VENDIDERIT, EMERIT, HABUERIT, DEDERIT. Quid eadem lex statim adjungit? Recita. DEQUE EJUS CAPITE QUAERITO. Cujus? qui coierit, convenerit? non ita est. Quid ergo est? dic. QUI TRIBUNUS MILITUM LEGIONIBUS QUATTUOR PRIMIS, QUIVE QUAESTOR, TRIBUNUS PLEBIS. Deinceps omnes magistratus nominavit. QUIVE IN SENATU SENTENTIAM DIXIT, DIXERIT. Quid tum? QUI EORUM COIT, COIERIT, CONVENIT, CONVENERIT, QUO QUIS JUDICIO PUBLICO CONDEMNARETUR. 'Qui eorum'—Quorum? videlicet qui supra scripti sunt. Quid intersit utro modo scriptum sit, etsi est apertum, ipsa tamen lex nos docet. Ubi enim omnes mortales alligat, ita loquitur: QUI VENENUM MALUM FECIT, FECERIT. Omnes viri, mulieres, liberi, servi in judicium vocantur. Si idem de coitione voluisset, adjunxisset, QUIVE COIERIT. Nunc ita est, DEQUE EJUS CAPITE QUAERITO, QUI MAGISTRATUM HABUERIT, INVE SENATU SENTENTIAM DIXERIT: QUI EORUM COIIT, COIERIT. Num is est Cluentius? Certe non est. Quis ergo est Cluentius? Qui tamen defendi caussam suam lege

pecuniarum repetundarum] Attius might say that he was not bound by the Lex, because he had not held any office or discharged any duty by which he could become subject to the penalty of the Lex. This refusal to admit his liability, says Cicero, would not be a confession that he had got money in illegal ways (confessio captae pecuniae), but it would be a way of avoiding a risk which the Lex did not impose on him (periculi non legitimi).

54. *infinitum est.*] 'It is unlimited:' the Lex is universal in its terms.—'tribunus militum,' &c.: the twenty-four 'tribuni' of the first four legions were elected by the 'populus;' and as it appears from this passage and from the fragments of the Lex Servilia, they were 'magistratus.'

Quis ergo est Cluentius?] Baiter has it: "Quis ergo est Cluentius? Qui tamen defendi caussam suam lege noluit." He makes 'Qui noluit' the answer to the question. 'Noluit' is the reading of T. Cicero, after proving as he assumes that the 'qui eorum' can only be those who are enumerated in the Lex "Qui Tribunus militum," &c.; asks if Cluentius is one of them, one of those included in the terms of the Lex, which relate to 'contiones,' 'combinations,' 'conspiracies.' He answers, "certainly not:" and then he asks, "Who then is he?" The answer which Baiter's text has is this: "He is one who after all has not consented to have his case defended by the words of the Lex." Classen, who properly retains 'nolit,' writes the sentence thus: "Quis ergo est Cluentius; qui tamen defendi caussam suam lege nolit?" which he explains thus, as he must do: "Who then is Cluentius, if he will not have his case defended by the Lex, though he is not included in it?" (tamen); or "If I say that Cluentius is not comprehended within the terms of the Lex, and Cluentius after all will not allow this defence, who is he, what are we to say of him?" But then there is no answer to this question; and it is plain that 'Itaque abjicio' is not properly connected with

nolit. Itaque abjicio legem: morem Cluentio gero: tibi tamen, Atti, pauca, quae ab hujus caussa sejuncta sunt, respondebo. Est enim quiddam in hac caussa, quod Cluentius ad se, est aliquid quod ego ad me putem pertinere. Hic sua putat interesse, se re ipsa et gesto negotio, non lege defendi; ego autem mea existimo interesse, me nulla in disputatione ab Attio videri esse superatum. Non enim mihi haec caussa sola dicenda est. Omnibus hic labor meus propositus est, quicumque hac facultate defensionis contenti esse possunt. Nolo quemquam eorum qui adsunt existimare me, quae de lege ab Attio dicta sunt, si reticuerim, comprobare. Quamobrem, Cluenti, de te tibi obsequor; neque ego legem recito, neque hoc loco pro te dico. Sed ea quae te a me desiderare arbitror non relinquam. LV. Iniquum tibi videtur, Atti, esse non iisdem legibus omnes teneri. Primum, ut id iniquissimum esse confitear, ejusmodi est ut commutatis eis opus sit legibus, non ut his quae sunt non pareamus. Deinde quis umquam hoc senator accusavit ut, quum altiorem gradum dignitatis beneficio populi Romani esset consecutus, eo se putaret durioribus legum conditionibus uti oportere? Quam multa sunt commoda quibus caremus; quam multa molesta ac difficilia quae subimus; atque haec omnia tantum honoris et amplitudinis commodo compensantur. Converte nunc ad equestrem ordinem atque in ceteros ordines easdem vitae conditiones; non perferent. Putant enim minus multos sibi laqueos legum et conditionum ac judiciorum propositos esse oportere, qui summum locum civitatis aut non potuerunt ascendere aut non petiverunt. Atque ut omittam leges alias omnes, quibus nos tenemur,

what precedes. Classen supposes and puts this answer in his note—"Nempe omnino non est inter eos qui lege tenentur." I hardly know what he would say, but there is certainly no sense in his explanation. Cicero has already said that Cluentius is not one of them; and the next question is: "If he is not one of those included in the Lex, and yet will not avail himself of the Lex, who is he?" Are we to supply an answer which has already been given to another question, an answer which is not an answer to the second question? It is clear that 'qui tamen —nolit' is the answer; and it means "Why, he is after all a man who will not," &c.; and so 'Itaque abjicio' becomes intelligible. But if 'qui tamen,' &c., is the answer, that is no reason for changing 'nolit' to 'noluit.'

ea quae te a me desiderare] I have followed S. T. and Classen, instead of Baiter and others, who have 'ea quae a me desiderari;' which reading however means the same as the other, for he says of Cluentius, "neque hoc loco pro te dico." It is therefore somebody else 'qui desiderat.' Classen supposes that Cicero turns to Attius when he says "Sed ea," &c.; and in fact at the beginning of the next chapter he addresses him by name. This division of chapters continually spoils the connexion.

55. *hoc—accusavit—uti oportere?*] There is no authority for the 'non' which in some editions is placed before 'oportere.' Cicero's meaning is clear, but the words are probably corrupt, or some of them. 'Accusavit' at least is corrupted. Baiter writes "hoc senator recusavit, ne, quum—uti oportere." Lambinus wrote "recusavit quin quo—uti oportere."

ceteri autem sunt ordines liberati, hanc ipsam legem, NE QUIS JUDICIO CIRCUMVENIRETUR, C. Gracchus tulit: eam legem pro plebe, non in plebem tulit. Postea L. Sulla, homo a populi caussa remotissimus, tamen quum ejus rei quaestionem hac ipsa lege constitueret qua vos hoc tempore judicatis, populum Romanum, quem ab hoc genere liberum acceperat, alligare novo quaestionis genere ausus non est. Quod si fieri posse existimasset, pro illo odio quod habuit in equestrem ordinem, nihil fecisset libentius quam omnem illam acerbitatem proscriptionis suae, qua est usus in veteres judices, in hanc unam quaestionem contulisset. Nec nunc quidquam agitur, mihi credite, judices, et prospicite id quod providendum est, nisi ut equester ordo in hujusce legis periculum concludatur. Neque hoc agitur ab omnibus, sed a paucis. Nam ii senatores qui se facile tuentur integritate et innocentia, quales, ut vere dicam, vos estis, et ceteri qui sine cupiditate vixerunt, equites ordini senatorio dignitate proximos, concordia conjunctissimos esse cupiunt; sed ii qui sese volunt posse omnia, neque praeterea quidquam esse aut in homine ullo aut in ordine, hoc uno metu se putant equites Romanos in potestatem suam redacturos, si constitutum sit ut de iis qui rem judicarent hujuscemodi judicia fieri possint. Vident enim auctoritatem hujus ordinis confirmari; vident judicia comprobari; hoc metu proposito evellere se aculeum severitatis vestrae posse confidunt. Quis enim de homine audeat paullo majoribus opibus praedito vere et fortiter judicare, quum videat sibi de eo quod coierit aut consenserit caussam esse dicendam? LVI. O viros fortes, equites Romanos, qui homini clarissimo ac potentissimo M. Druso tribuno

C. Gracchus] C. Sempronius Gracchus had carried a Lex which punished those who procured an innocent man's conviction by foul means. This is the Lex of which Cicero speaks, "ne quis judicio circumveniretur." M. Livius Drusus, B.C. 92, had also carried a Lex by which a Quaestio was established. "Si quis ob rem judicandam pecuniam accepisset" (Pro Rabir. Post. c. 7). All the Leges of Livius were repealed; but L. Sulla re-enacted this Lex Sempronia, which formed a chapter in his Lex de Sicariis.

in veteres judices.] The Equites, who were the former 'equites,' from whom Sulla took the power. It was C. Gracchus who gave this office to the 'equites,' which they held about fifty years, till Sulla took it from them. In Sulla's first proscription sixteen hundred Equites perished (Appian, B. C. i. 95). 'Qua est usus' is a correction of P. Manutius. The MSS. have 'quaestus.'

de iis qui rem judicarent] P. Manutius says that the 'ratio temporum' requires 'judicarint,' and Baiter has printed 'judicarint.' It means those 'qui judicabant,' who were 'judices,' and therefore 'judicarent' is right.

56. *M. Druso*] Klotz refers to Vell. Pat. ii. 13; Appian, B. C. i. 25; Liv. Epit. 70. But what is spoken of there is a different thing. Cicero explains himself here. Drusus, with the aid of all the nobles of the time, attempted to bring the Equites under a Lex which, as Cicero says, did not apply to them. Graevius makes a strange blunder here, when he says that 'nobilitas' means only "claritatem generis, non homines ipsos clari generis;" a mistake which Classen corrects, which any reader of Cicero might correct (Verr. ii. 4. c. 37: 'ista praeclara nobilitas'); and Caesar, B. G. i. 2.

plebis restiterunt, quum ille nihil aliud ageret cum illa cuncta quae tum erat nobilitate, nisi ut ii qui res judicassent, hujuscemodi quaestionibus in judicium, vocarentur. Tunc C. Flavius Pusio, Cn. Titinnius C. Maecenas, illa robora populi Romani, ceterique ejusdem ordinis, non fecerunt idem quod nunc Cluentius, ut aliquid culpae suscipere se putarent recusando, sed apertissime repugnarunt, quum haec recusarent et palam fortissime atque honestissime dicerent se potuisse judicio populi Romani in amplissimum locum pervenire, si sua studia ad honores petendos conferre voluissent; sese vidisse in ea vita qualis splendor inesset, quanta ornamenta, quae dignitas; quae se non contempsisse, sed ordine suo patrumque suorum contentos fuisse, et vitam illam tranquillam et quietam, remotam a procellis invidiarum et hujuscemodi judiciorum sequi maluisse: aut sibi ad honores petendos aetatem integram restitui oportere, aut, quoniam id non posset, eam conditionem vitae quam secuti petitionem reliquissent manere: iniquum esse eos qui honorum ornamenta propter periculorum multitudinem praetermisissent, populi beneficiis esse privatos, judiciorum novorum periculis non carere; senatorem hoc queri non posse, propterea quod ea conditione proposita petere coepisset, quodque permulta essent ornamenta quibus eam mitigare molestiam posset, locus, auctoritas, domi splendor, apud exteras nationes nomen et gratia, toga praetexta, sella curulis, insignia, fasces, exercitus, imperia, provinciae; quibus in rebus quum summa recte factis majores nostri praemia, tum plura peccatis pericula proposita esse voluerunt. Illi non hoc recusabant, ne ea lege accusarentur qua nunc Habitus accusatur, quae tunc erat Sempronia, nunc est Cornelia; intelligebant enim ea lege equestrem ordinem non teneri; sed ne nova lege alligarentur laborabant. Habitus ne hoc quidem umquam recusavit quo minus vel ea lege rationem vitae suae redderet qua non tenetur. Quae si vobis conditio placet, omnes id agamus ut haec quam primum in omnes ordines quaestio perferatur.

LVII. Interea quidem, per deos immortales, quoniam omnia commoda nostra, jura, libertatem, salutem denique legibus obtinemus, a legibus non recedamus; simul et illud quam sit iniquum

ut ii] The MSS. have 'utique.' 'Ut ii qui' is Halm's correction.

ceterique ejusdem ordinis,] This is Klotz's reading, perhaps the best. S. T. have 'ejuscemodi,' not a genuine form; the other MSS. 'hujuscemodi.' Classen would have 'equestrisque ordinis,' and Baiter accepts this. Classen does not like 'aufractu,' which is generally printed between 'judiciorum' and 'sequi;' and it ought to be omitted, as there seems to be no authority for it.

Compare with this chapter Pro Rabir. Post. c. 7.

qua non tenetur] S.T. There is a reading 'qua non teneretur.'

cogitemus, populum Romanum aliud nunc agere; vobis rem publicam et fortunas suas commisisse, ipsum sine cura esse; non metuere ne lege ea, quam numquam ipse jusserit, et quaestione qua se solutum liberumque esse arbitretur, per paucos judices astringatur. Agit enim sic caussam T. Attius, adolescens bonus et disertus, omnes cives legibus teneri omnibus: vos attenditis et auditis silentio, sicut facere debetis. A. Cluentius caussam dicit eques Romanus ea lege qua senatores et ii qui magistratum habuerunt soli tenentur; mihi per eum recusare et in arce legis praesidia constituere defensionis meae non licet. Si obtinuerit caussam Cluentius, sicuti vestra aequitate nixi confidimus, omnes existimabunt, id quod erit, obtinuisse propter innocentiam, quoniam ita defensus sit, in lege autem quam attingere noluerit praesidii nihil fuisse. Hic nunc est quiddam quod ad me pertineat, de quo ante dixi, quod ego populo Romano praestare debeam, quoniam is vitae meae status est ut omnis mihi cura et opera posita sit in hominum periculis defendendis. Video quanta et quam periculosa et quam infinita quaestio tentetur ab accusatoribus, quum eam legem, quae in nostrum ordinem scripta sit, in populum Romanum transferre conentur. Qua in lege est QUI COIERIT, quod quam late pateat videtis: CONVENERIT, aeque incertum et infinitum est: CONSENSERIT, hoc vero quum infinitum, tum obscurum et occultum est: FALSUMVE TESTIMONIUM DIXERIT; quis de plebe Romana testimonium dixit umquam cui non hoc periculum T. Attio auctore paratum esse videatis? Nam dicturum quidem certe, si hoc judicium plebi Romanae propositum sit, neminem umquam esse confirmo. Sed hoc polliceor omnibus, si cui forte hac lege negotium facessetur qui lege non teneatur, si is uti me defensore voluerit, me ejus caussam legis praesidio defensurum, et vel his judicibus vel horum similibus facillime probaturum, et omni me defensione usurum esse legis; qua

57. *aliud—agere;*] This means to be negligent or careless. See c. 64: 'Oppianicum aliud agentem.'

quam—jusserit,] The 'populus' had given their consent to the Lex, but not a Lex which bound themselves. 'Jubere' is the word which signifies the declaration of the people's will in legislation; or in a matter of any kind where their will was necessary to give the thing a legal character; as in Adrogatio for instance (Gell. v. 19): "ejus rogationis verba haec sunt: Velitis, jubeatis, Quirites, uti Lucius Valerius &c. —haec ita uti dixi ita vos Quirites rogo." Compare Livy, 31. c. 6: "Vellent, juberent," &c.

qui magistratum habuerunt] Manutius observes, "though they are not senators; for those are called senators whom the censor has admitted (legit) into the senate; but many who have not yet been admitted into the senate, discharge the office of a 'magistratus.' Accordingly it is written in the Lex: 'Qui tribunus militum,' &c., c. 54."

hominum periculis] The reading of S. T. The common reading 'omnium' is a usual blunder.

nunc ut utar ab eo cujus voluntati mihi obtemperandum est non conceditur. LVIII. Non enim debeo dubitare, judices, quin, si qua ad vos caussa ejusmodi delata sit ejus qui lege non teneatur, etiamsi is invidiosus aut multis offensus esse videatur, etiamsi eum oderitis, etiamsi inviti absoluturi sitis, tamen absolvatis et religioni potius vestrae quam odio pareatis. Est enim sapientis judicis cogitare tantum sibi a populo Romano esse permissum quantum commissum sit et creditum; et non solum sibi potestatem datam, verum etiam fidem habitam esse meminisse: posse quem oderit absolvere, quem non oderit condemnare; et semper non quid ipse velit, sed quid lex et religio cogat, cogitare; animadvertere qua lege reus citetur, de quo reo cognoscat, quae res in quaestione versetur. Quum haec sunt videnda, tum vero illud est hominis magni, judices, atque sapientis, quum illam judicandi caussa tabellam sumpserit, non se reputare solum esse, neque sibi quodcumque concupierit licere; sed habere in consilio legem, religionem, aequitatem, fidem; libidinem autem, odium, invidiam, metum, cupiditatesque omnes amovere; maximique aestimare conscientiam mentis suae, quam ab diis immortalibus accepimus, quae a nobis divelli non potest; quae si optimorum consiliorum atque factorum testis in

58. *multis offensus*] 'Offensus' here means 'qui alios offendit,' or he who is become an object of dislike. See Vol. I. Verr. ii. 3. c. 62, note.

Est—cogitare] The reading of S. T. is "Est enim sapientis judicis meminisse se hominem, cogitare," &c.

permissum — commissum] Cicero is fond of the opposition between these two words, which he often uses. The meaning is explained by what he says.

fidem habitam] 'Fidem habere alicui' is to trust him; as 'honorem habere' is to honour. 'Fidem facere' is to get belief or credit, to make a man believe you or believe something. Caesar (B. G. vi. 41) writes, 'fidem non faceret,' where there is a wrong reading 'haberet,' and a reading 'haberent,' which may be right.

illam — tabellam] The voting table. See Vol. I. Verr. Divin. c. 7. This use of 'ille' is common. It is an emphatic way of speaking.

conscientiam mentis suae,] "The joint knowledge of a man's own mind." The mind is represented as privy to its own thoughts: as if there were two things, as if the conscience were a witness of what the man thinks and does; as if it were a judge over the other faculties. The constitution of our nature compels us to speak in this way, for we know that we judge ourselves. Butler has the same more fully expressed: "There is a superior principle of reflection or conscience in every man, which distinguishes between the internal principles of his heart as well as his external actions; which passes judgment on himself and them" (Sermon 2, Upon Human Nature). It is an old doctrine, as universal as the fact, which is true. It appears in the Laws of Menu (viii. 84), "The soul is its own witness;" (viii. 85), "Sinners say in their heart: No man sees us. In truth the gods see them clearly, and also the spirit in their breast." Seneca (Ep. 41) expresses it well: "Sacer intra nos spiritus sedet, malorum bonorumque nostrorum observator et custos. Hic prout a nobis tractatus est, ita nos ipse tractat." This is the ὁ ἔνδον δαίμων of the Emperor (M. Anton. ii. 13, 17), ὁ ἐν σοὶ θεὸς, God in Man (iii. 5). It is that "which Zeus has given to every man as a ruler and a guide, a portion of Zeus himself; and this is every man's understanding and reason" (v. 27). There is much more to the same effect in the Emperor's Meditations (iii, 12; and in other places).

omni vita nobis erit, sine ullo metu et summa cum honestate vivemus. Haec si T. Attius aut cognovisset aut cogitasset, profecto ne conatus quidem esset dicere, id quod multis verbis egit, judicem quod ei videatur statuere et non devinctum legibus esse oportere. Quibus de rebus mihi pro Cluentii voluntate nimium, pro rei dignitate parum, pro vestra prudentia satis dixisse videor. Reliqua perpauca sunt, quae quia vestrae quaestionis erant, idcirco illi statuerunt fingenda esse sibi et proferenda, ne omnium turpissimi reperirentur, si in judicium nihil praeter invidiam attulissent. LIX. Atque ut existimetis me necessario de his rebus, de quibus jam dixerim, pluribus egisse verbis, attendite reliqua. Profecto intelligetis ea quae paucis demonstrari potuerint brevissime esse defensa.

Cn. Decidio Samniti, ei qui proscriptus est, injuriam in calamitate ejus ab hujus familia factam esse dixistis. Ab nullo ille liberalius quam a Cluentio tractatus est. Hujus illum opes in rebus ejus incommodissimis sublevarunt. Atque hoc quum ipse, tum ejus amici necessariique omnes cognorunt. Ancharii et Paceni pastoribus hujus villicos vim et manus attulisse. Quum quaedam in collibus, ut solet, controversia pastorum esset orta, Habiti villici rem domini et privatam possessionem defenderunt. Quum esset expostulatio facta, caussa illis demonstrata, sine judicio controversiaque discessum est.—P. Aelii testamento propinquus exheredatus quum esset, heres hic alienior institutus est.—P. Aelius Habiti merito fecit; neque hic in testamento faciendo interfuit, idque testamentum ab hujus inimico Oppianico est obsignatum.—Floro legatum ex

pro rei dignitate] The reading of S. T. The other reading 'rei publicae' is properly rejected by the later editors.

59. *collibus,*] Ernesti altered this to 'callibus;' but 'collibus' is the MSS. reading. Yet 'callibus' may be right. Baiter, who has 'callibus,' refers to Varro, R. R. ii. 2. 10; 9. 16, and Schneider's notes. Schneider explains 'calles' to be "wooded places where the cattle feed as they are driven through them to the distant winter pastures." He refers to Cicero, Pro Sextio, c. 5. "Italiae calles atque pastorum stabula;" and to Sueton. Caesar. c. 19, where 'silvae callesque' occurs. There is a definition by Servius (Virgil, Aen. iv. 405):

> "It nigrum campis agmen, praedamque per herbas
> Convectant calle angusto."

Servius says: "*Callis* est semita tenuior callo pecorum praedurata." Schneider refers also to a passage of Justin (xliv. 4) which is very clear: "Postmodum hunc domum relatum in callem angustum, per quem armenta commeare consueverant, projici jussit."

It does not appear what the 'privata possessio' is, but it may be the space assigned to Habitus' flocks on the pasture grounds. 'Illis' are Ancharius and Pacenus. The cause of the quarrel among the shepherds was explained to them, and they were satisfied. But what has all this to do with the matter?

legatum] Habitus was left 'heres,' and he had of course to pay the legacy. It seems that xxx was written in the will, and it was known somehow that it ought to have been ccc according to the testator's intention.

testamento infitiatum esse.—Non est ita. Sed quum H-S xxx scripta essent pro H-S ccc, neque ei cautum satis videretur, voluit eum aliquid acceptum referre liberalitati suae. Primo debere negavit; post sine controversia solvit. Ceii cujusdam Samnitis uxorem post bellum ab hoc esse repetitam.—Mulierem quum emisset a sectoribus, quo tempore eam primum liberam esse audivit, sine judicio reddidit Ceio.—Ennium esse quendam cujus bona teneat Habitus.—Est hic Ennius egens quidam, calumniator, mercenarius Oppianici, qui permultos annos quievit; deinde aliquando cum servis Habiti furti egit; nuper ab ipso Habito petere coepit. Hic illo privato judicio, mihi credite, vobis iisdem fortasse patronis, calumniam non effugiet. Atque etiam, ut nobis renuntiatur, hominem multorum hospitem, Ambivium quendam, coponem

But the legatee could only take what was given him by the will. Cicero is so brief about the matter that it is hard to understand him. The word 'cautum' perhaps means that the testator had not taken pains enough to give to Florus by his testament what he intended to give him. The 'heres' paid, as it seems, what the testator intended to give, which was more than he did give by the terms of the will.

Mulierem] The woman had been sold after the war, probably the Marsic war, and was bought by Habitus from the 'sectores' or purchasers of confiscated property. On hearing that she was free, Habitus gave her up to her husband without waiting for her liberty to be declared in an action. Cicero's defence is that Cluentius did not know that she was a free woman, when he bought her, for if he did know, he came under the penalties of the Lex Fabia de plagiariis (Justin. Inst. iv. 18. 10, and Schrader's notes). "Lege Fabia tenetur, qui civem Romanum eundemque qui in Italia liberatus sit, celaverit, vinxerit, vinctumque habuerit, vendiderit, emerit . . . Ejusdem legis capite II. tenetur qui . . . alienum servum invito domino celaverit, vendiderit, emerit dolo malo." The law was at least as old as Cicero's time, for he mentions it (Pro C. Rabirio, c. 3).

cum servis] He brought an action of theft against the slaves of Habitus, which was in fact an action against the master. As this was an 'actio,' Cicero calls it 'privatum judicium.' The 'noxalis actio' was the 'actio' in which a demand was made on a master on account of the delict of a slave, and the master was bound to pay the damages, or 'noxae dedere' (Gaius iv. 75).—If a slave committed a delict, there was an action against him for it after he was manumitted; but while he was a slave, the 'noxalis actio' was against his master. There could be no 'actio furti' against the slaves of Habitus while they were Habitus' slaves; and if Cicero is to be understood literally, we cannot understand him. He says that Ennius lately began to sue Habitus. This would be consistent with the slaves of Habitus having been made free, for Ennius might then have brought against them the 'actio furti.' But he could not bring against them the 'condictio furtiva' (Dig. 13. 1. 15); for the 'actio furti' was founded on the delict, but the 'condictio' was founded on the thing being wrongfully possessed, and such a possession could never be attributed to a slave (Savigny, System, &c. ii. Beylage iv.).

coponem] A tavern-keeper, an inn-keeper. Klotz says that Cicero perhaps purposely called him 'copo' contemptuously, after the more common fashion, instead of using the more distinguished form 'caupo.' Those may believe this who choose. Cicero jokes on the practice of inviting passengers into his tavern: "if he shall invite us to a suit, we shall treat him in such a way that he will be sorry for having left the (Latin) road." Cicero makes a joke or play on the man's occupation, 'multorum hospitem,' he entertained many, but not for nothing. He pressed them to turn in; and he made them pay.

Klotz says that the ancient tavern-keepers had no signs, but as a general rule personally invited the passers by to turn in, for which the common expression was 'invi-

de via Latina, subornatis qui sibi a Cluentio servisque ejus in taberna sua manus allatas esse dicant. Quo de homine nihil etiam nunc dicere nobis est necesse. Si invitaverit, id quod solet, sic hominem accipiemus ut moleste ferat se de via decessisse. Habetis, judices, quae in totam caussam de moribus A. Cluentii, quem illi invidiosum reum volunt esse, annos octo meditati accusatores collegerunt. Quam levia genere ipso, quam falsa re, quam brevia responsu. LX. Cognoscite nunc id quod ad vestrum jusjurandum pertinet, quod vestri judicii est, quod vobis oneris imposuit ea lex, qua coacti huc convenistis, de criminibus veneni; ut omnes intelligant quam paucis verbis haec caussa perorari potuerit, et quam multa a me dicta sint, quae ad hujus voluntatem maxime, ad vestrum judicium minime pertinerent.

Objectum est Vibium Cappadocem ab hoc A. Cluentio veneno esse sublatum. Opportune adest homo summa fide et omni virtute praeditus, L. Plaetorius, senator, qui illius Vibii hospes fuit et familiaris. Apud hunc ille Romae habitavit, apud hunc aegrotavit, hujus domi est mortuus. [At heres est Cluentius.] Intestatum dico esse mortuum, possessionemque ejus bonorum, ex edicto praetoris, huic, illius sororis filio, adolescenti pudentissimo et in primis honesto, equiti Romano datam, Numerio Cluentio, quem videtis.

Alterum veneficii crimen—Oppianico huic adolescenti, quum ejus

tare.' I suppose then the landlord stood at the door all night long to invite travellers who arrived late. One would suppose that a benighted traveller would need no invitation; and that he would know a 'caupona' by some sign. There is one bit of information to be got from Klotz's note. He says there is a clever dissertation on the ancient inns by Karl Zell, in his Ferienschriften, Vol. I. pp. 5–52. That information is worth all the rest. The Roman law on the liability of 'caupones' for goods which travellers bring into their inns is in the Digest (4. tit. 9); and we have adopted it.—'caussam,' S. T. The other reading is 'vitam.'

60. *ad hujus voluntatem*] To satisfy Cluentius: "to answer the charges against him; for Cluentius wished this to be done, though these charges were no part of the matter of the trial, which was about poisoning" (P. Manutius).

At heres—Cluentius] These words are omitted by S. T. F. A. The objection to them is that they are quite useless, and somewhat inconsistent with the text. The charge or ground of suspicion against Cluentius is, that the man died in his house. The answer is, Cluentius got nothing by it, for the man died intestate, and the 'possessio bonorum,' the authority to take possession of his property, was given according to the Edict, to the young man whom Cicero points out in the court, who was the next of kin.

The origin and meaning of the 'bonorum possessio ex edicto' are not certain. Modern jurists are not agreed on the matter. If a man was next of kin, and there was no other next of kin to a deceased intestate, this one person was of course entitled to the deceased's property. See Vol. I. Verr. ii. 1. c. 44.

Alterum—crimen.] I have put — after 'crimen' to help the reader, if it will help him. Cicero says: "A second poisoning charge—poison was prepared for young Oppianicus here," &c. The 'mulsum' is a mixture of wine and honey. The best was made of old wine.

in nuptiis, more Larinatium, multitudo hominum pranderet, venenum Habiti consilio paratum; id quum daretur in mulso, Balbutium quendam ejus familiarem intercepisse, bibisse statimque esse mortuum. Hoc ego si sic agerem tamquam mihi crimen esset diluendum, haec pluribus verbis dicerem, quae nunc paucis percurrit oratio mea. Quid umquam Habitus in se admisit ut hoc tantum ab eo facinus non abhorrere videatur? quid autem magno opere Oppianicum metuebat, quum ille verbum omnino in hac ipsa caussa nullum facere potuerit, huic autem accusatores viva matre deesse non possint? quod jam intelligetis. An ut de caussa ejus periculi nihil decederet, ad caussam novum crimen accederet? Quod autem tempus veneni dandi illo die? illa frequentia? per quem porro datum? unde sumptum? quae deinde interceptio poculi? cur non de integro autem datum? Multa sunt quae dici possunt; sed non committam ut videar non dicendo voluisse dicere. Res enim jam se ipsa defendit. Nego illum adolescentem, quem statim epoto poculo mortuum esse dixistis, omnino illo die esse mortuum. Magnum crimen et impudens mendacium. Perspicite cetera. Dico illum, quum ad illud prandium crudior venisset, et, ut aetas illa fert, sibi tum non pepercisset, aliquot dies aegrotasse et ita esse mortuum. Quis huic rei testis est? Idem qui sui luctus, pater; pater, inquam, illius adolescentis. Quem propter animi dolorem pertenuis suspicio potuisset ex illo loco testem in A. Cluentium constituere, is hunc suo testimonio sublevat. Quod recita. Tu autem, nisi molestum est, paullisper exsurge; perfer hunc dolorem commemorationis necessariae; in qua ego diutius non morabor, quoniam quod fuit viri optimi fecisti, ut ne cui innocenti maeror tuus calamitatem et falsum crimen afferret. [TESTIMONIUM BALBUTII PATRIS.]

nullum facere potuerit] On account of his youth, as some suppose. But Klotz observes that time would remove that difficulty. There must be some other meaning in the words.—'An ut de caussa,' &c.: "did he do so that nothing might be taken from the case in which he was exposed to danger; to the case a new charge might be added?"

crudior] He was not in good health, his stomach was loaded, his digestion was bad; he came and overate himself, as people of his age will do; and he died. Manutius says of 'crudior'—"pridiana coena non concocta." But there must have been several days' supper ill digested, or he must have committed terrible excess the day before. Cicero (De Fin. ii. 8) gives a frightful description of these gormandizers: "Nolim enim mihi fingere asotos, ut soletis, qui in mensam vomant, et qui de conviviis auferantur, crudique postridie se rursus ingurgitent!" 'Cruditas' was a condition of the body in some people who were careful on that account to avoid any excess:

"Namque pila lippis inimicum et ludere crudis."

(Hor. Sat. i. 5. v. 49.)

Juvenal (i. 142) has some lines on a man bathing with a full paunch and getting his deserts:

"... crudum pavonem in balnea portas:
Hinc subitae mortes atque intestata senectus."

LXI. Unum etiam mihi reliquum ejusmodi crimen est, judices, ex quo illud perspicere possitis quod a me initio orationis meae dictum est: quidquid mali per hosce annos A. Cluentius viderit, quidquid hoc tempore habeat sollicitudinis ac negotii, id omne a matre esse conflatum. Oppianicum veneno necatum esse, quod ei datum sit in pane per M. Asellium quendam, familiarem illius, idque Habiti consilio factum esse dicitis. In quo primum illud quaero, quae caussa Habito fuerit cur interficere Oppianicum vellet. Inimicitias enim [inter ipsos] fuisse confiteor, sed homines inimicos suos morte affici volunt aut quod eos metuunt aut quod oderunt. Quo tandem igitur Habitus metu adductus tantum in se facinus suscipere conatus est? quid erat quod jam Oppianicum, poena affectum pro maleficiis et ejectum e civitate, quisquam timeret? quid metuebat? ne oppugnaretur a perdito? an ne accusaretur a damnato? an ne exsulis testimonio laederetur? Sin autem quod oderat Habitus inimicum, idcirco illum vita frui noluit, adeone erat stultus ut illam quam tum ille vivebat vitam esse arbitraretur, damnati, exsulis, deserti ab omnibus? quem propter animi importunitatem nemo recipere tecto, nemo audire, nemo alloqui, nemo adspicere vellet? Hujus igitur Habitus vitae invidebat? Hunc si acerbe et penitus oderat, non eum quam diutissime vivere velle debebat? huic mortem maturabat inimicus, quod illi unum in malis erat perfugium calamitatis? Qui si quid animi ac virtutis habuisset, ut multi saepe fortes viri in ejusmodi dolore, mortem sibi ipse conscisset; huic

61. *aut quod metuunt aut*] The common reading is 'vel quod metuunt vel.' Cicero mentions fear and hatred as the causes which move a man to desire another's death. But there are other causes, such as profit to be got by a man's death, in which case there may be neither fear nor hatred, but motive enough to make many people murder another.

a damnato] Or 'a condemnato,' another reading. As Oppianicus was convicted and had become 'infamis,' he could not prosecute another person, nor could he give evidence against him, for he could not enter Rome (c. 62).

quod oderat Habitus inimicum,] The word 'inimicum' was introduced by Lambinus, and we know now that he did this on good authority. It is in S. T. Classen again in a note affirms that Lambinus seldom made any change in the text without authority.

adire—adspicere] The MSS. have 'audire.' The reading 'respicere' is now properly ejected.

ut multi saepe] Men of courage, he says, release themselves from trouble by suicide, which Cicero here does not condemn. His argument is good for nothing. He says that Oppianicus, if he had possessed spirit, would have ended his days, as many men of courage have done. But he was not a man of courage, as Cicero means to affirm; he wished to live any way. If he wished to live, and ought to have wished to die, that is no reason why another man might not form a design on his life; if for no other reason, to do that for him which he ought to have done for himself. Cicero's talk is absurd. During his exile Cicero, in his letter, speaks of suicide. He affects to lament that he had not committed suicide, when he was compelled to go into exile. This is the most ridiculous thing that he could say; for he could at any time have made amends for this omission, and have freed himself from all further trouble.

quamobrem id vellet inimicus offerre quod ipse sibi optare deberet? Nam nunc quidem quid tandem illi mali mors attulit? nisi forte ineptis fabulis ducimur ut existimemus illum apud inferos impiorum supplicia perferre, ac plures illic offendisse inimicos quam hic reliquisse; a socrus, ab uxorum, a fratris, a liberum poenis actum esse praecipitem in sceleratorum sedem ac regionem. Quae si falsa sunt, id quod omnes intelligunt, quid ei tandem aliud mors eripuit praeter sensum doloris? LXII. Age vero, per quem venenum datum? per M. Asellium. Quid huic cum Habito? Nihil; atque adeo, quod ille Oppianico familiarissime est usus, potius etiam simultas. Eme igitur quem sibi offensiorem, Oppianico familiarissimum sciebat esse, potissimum et scelus suum et illius periculum committebat? Cur igitur tu, qui pietate ad accusandum excitatus es, hunc Asellium esse inultum tamdiu sinis? cur non Habiti exemplo usus es ut per illum qui attulisset venenum de hoc praejudicaretur? Jam vero illud quam non probabile, quam inusitatum, judices, quam novum, in pane datum venenum? Faciliusne potuit quam in poculo? latius potuit abditum aliqua in parte panis quam si totum

ineptis fabulis] The orator declares that every body knows that all the punishments after death which the poets and the people speak about are an idle story. He speaks here, as if he admitted no existence after death, though later in life he had, or affected to have, another opinion. (De Sen., De Am.) Sylvius remarks that this is a wicked opinion of Cicero, to deny the existence of the Inferi; equally wicked is it also, if he intends to deny the immortality of the soul. In the speech which Caesar makes in Sallust (De Catil. Conj. c. 51) he says what Cicero says here: "De poena possumus equidem dicere id quod res habet; in luctu atque miseriis mortem aerumnarum requiem, non cruciatum esse; eam cuncta mortalium mala dissolvere; ultra neque curae neque gaudio locum esse." In the treatise De Natura Deorum (ii. 2) after pointing to the heavens as a proof that there must be some divinity of most surpassing intelligence, Cicero remarks that if this belief had not been firmly fixed in men's minds, it could not have grown stronger in the course of time, nor could it have continued to exist through all generations of men. He adds as a proof of this the decay of superstitious belief: "Etenim vidimus ceteras opiniones fictas atque vanas diuturnitate extabuisse. Quis enim Hippocentaurum fuisse aut Chimaeram putat? quaeve anus tam excors inveniri potest quae illa quae quondam credebantur apud inferos portenta extimescat? Opinionum enim commenta delet dies, naturae judicia confirmat. Itaque et in nostro populo et in ceteris deorum cultus religionumque sanctitates exsistunt in dies majores atque meliores." This is a curious passage on the decay of superstition in Cicero's time. But if it decays, it revives in another form. This is the history of superstition. "La superstition est à la religion ce que l'astrologie est à l'astronomie, la fille très folle d'une mère très sage. Ces deux filles ont long-temps subjugué toute la terre" (Voltaire).

62. *atque adeo,*] This is not an uncommon use of 'adeo,' and it agrees well with the form of the word: "What has Habitus to do with him? Nothing; nay, as Asellius was very intimate with Oppianicus, there was even rather some ill will between them." See Vol. I. Verr. Index.

praejudicaretur?] This has been so used before. "Why did you not follow the example of Habitus, that by bringing the man to trial who gave the poison, you might establish a 'praejudicium' against Habitus."

latius potuit] Though 'latius' is the

colliquefactum in potione esset? celerius potuit comestum quam epotum in venas atque in omnes partes corporis permanare? facilius fallere in pane, si esset animadversum, quam in poculo, quum ita confusum esset ut secerni nullo modo posset?—At repentina morte periit.—Quod si esset ita factum, tamen ea res propter multorum ejusmodi casum, minime firmam veneni suspicionem haberet. Si esset suspiciosum, tamen ad alios potius quam ad Habitum pertineret. Verum in eo ipso homines impudentissime mentiuntur. Id ut intelligatis et mortem ejus, et quemadmodum post mortem in Habitum sit crimen a matre quaesitum, cognoscite.

Quum vagus et exsul erraret, atque undique exclusus Oppianicus in Falernum se ad C. Quintilium contulisset, ibi primum in morbum incidit, ac satis vehementer diuque aegrotavit. Quum esset una Sassia, eaque Sex. Albio quodam colono, homine valenti, qui simul esse solebat, familiarius uteretur quam vir dissolutissimus incolumi fortuna pati posset, et jus illud matrimonii castum atque legitimum damnatione viri sublatum arbitraretur, Nicostratus quidam, fidelis Oppianici servulus, percuriosus et minime mendax, multa dicitur domino renuntiare solitus esse. Interea Oppianicus quum jam convalesceret, neque improbitatem coloni in Falerno diutius ferre posset, et huc ad Urbem profectus esset, solebat enim extra portam aliquid habere conducti, cecidisse de equo dicitur, et homo infirma valetudine latus offendisse vehementer, et, posteaquam ad Urbem cum febri venerit, paucis diebus esse mortuus. Mortis ratio, judices, ejusmodi est ut aut nihil habeat suspicionis, aut, si quid habet, id intra parietes in domestico scelere versetur. LXIII. Post mortem ejus Sassia moliri statim nefaria mulier coepit insidias filio: quaestionem habere de viri morte constituit. Emit de A. Rupilio, quo erat usus Oppianicus medico, Stratonem quendam, quasi ut

reading of all the MSS., and is quite plain, the critics have not let it rest, and many of them have recommended 'latentius.' Any body may understand 'latius.' "Is poison diffused more completely," says Cicero, "more widely," as he has it, "when it is in a part of a loaf than when it is all mixed in a draught?" Certainly it is not; but I suppose, as they were expert in poisoning, they could poison a whole loaf as well as a part.

casum—haberet] This is the reading of S. T., and it is much superior to the common reading, "mortem satis firmam veneni suspicionem non haberet." We cannot tell which is the genuine text, but the evidence of the words is in favour of that which Classen and Baiter have taken, and which I have followed.

colono,] See Vol. I. Verr. ii. 3. c. 22 — 'incolumi fortuna:' Oppianicus, though a most abandoned fellow, would not in his prosperity (incolumi fortuna) have allowed his wife to have adulterous intercourse with Albius, as Cicero insinuates that she had.

ad Urbem] He came near to the city, 'ad urbem,' but did not enter it. See Vol. I. Verr. Act. i. c. 15. His 'exsilium,' it seems, was from the city of Rome, and no further. There was no punishment of death now, for a Lex Porcia and a Lex Sempronia forbade it, except for treason, as it seems.

idem faceret quod Habitus in emendo Diogene fecerat. De hoc Stratone et de Ascla quodam servo suo quaesituram esse dixit. Praeterea servum illum Nicostratum, quem nimium loquacem fuisse ac nimium domino fidelem arbitrabatur, ab hoc adolescente Oppianico in quaestionem postulavit. Hic quum esset illo tempore puer, et illa quaestio de patris sui morte constitui diceretur, etsi illum servum et sibi benevolum esse et patri fuisse arbitrabatur, nihil tamen est ausus recusare. Advocantur amici et hospites

63. *Ascla*] Most of the MSS. have 'assecla;' but it seems that a proper name is wanted.

Advocantur amici] The torture, it appears, was extrajudicial. The friends of the deceased were called in to be present, as witnesses of what the tortured said, and to determine when it had gone far enough. The men who were present were "homines honesti atque omnibus rebus ornati." So much do notions of right and wrong vary at different times and among different people, and yet at the bottom the notions of right and wrong are the same always. Cicero (Or. Part. c. 14) has some remarks on torture, in which he shows that it does not necessarily extract truth. He has another passage (Or. Part. c. 34): "Sin quaestiones habitae, aut postulatio ut habeantur, caussam adjuvabunt—dicendum de vi doloris, de opinione majorum, qui eam rem totam nisi probassent certe repudiassent; de institutis Atheniensium, Rhodiorum, doctissimorum hominum, apud quos etiam, id quod acerbissimum est, liberi civesque torquentur; de nostrorum etiam prudentissimorum hominum institutis, qui quum de servis in dominos quaeri noluissent, de incestu tamen, et conjuratione quae facta me consule est, quaerendum putaverunt."

This statement of Cicero that free men were put to the torture at Athens to get evidence from them does not appear to be true, for it was provided, as it seems, by a Psephisma of Scamandrius, that no free Athenian could be put to the torture. (Andocides, De Myst. c. 10.) In the oration of Antiphon about the murder of Herodes (c. 8) mention is made of a free man being put to the torture to get evidence out of him; but it does not appear that he was an Athenian.

It is said that slave evidence at Athens was always taken by torture, and this is inferred from a passage of Antiphon (Antiphon, Tetral. i. p. 633). It may have been so, but this passage does not prove it. The Athenian orators, Demosthenes among them, speak of the superiority of this evidence over the evidence of free men taken without torture (In Onetor. i. p. 874): *ὑμεῖς τοίνυν καὶ ἰδίᾳ καὶ δημοσίᾳ βάσανον ἀκριβεστάτην πασῶν νομίζετε· καὶ ὁπόταν δοῦλοι καὶ ἐλεύθεροι παραγένωνται, δέῃ δ' εὑρεθῆναι τὸ ζητούμενον, οὐ χρῆσθε ταῖς τῶν ἐλευθέρων μαρτυρίαις, ἀλλὰ τοὺς δούλους βασανίζοντες οὕτω ζητεῖτε τὴν ἀλήθειαν εὑρεῖν τῶν πεπραγμένων. εἰκότως, ὦ ἄνδρες δικασταί· τῶν μὲν γὰρ μαρτυρησάντων ἤδη τινὲς οὐ τἀληθῆ μαρτυρῆσαι ἔδοξαν· δούλων δὲ βασανισθέντων οὐδένες πώποτ' ἐξηλέγχθησαν ὡς οὐκ ἀληθῆ τὰ ἐκ τῆς βασάνου εἶπον.* Nobody will believe that it was never discovered that slaves' evidence taken by torture was false. Cicero says that it was. We can only accept the statement of Demosthenes by supposing that the free men were such liars that the truth could not be got out of them, and the only chance of getting it was by compelling slaves to give evidence. If the Athenian free men were men of common veracity, the superiority of their evidence over slave evidence got by torture would have been soon seen. Polybius, who knew his countrymen, expresses his opinion of their villany in the strongest terms (vi. 56), and contrasts it with the honourable character of the Romans. However Demosthenes is speaking 'oratorie.' He is lying also. Some of the orators knew well the worthlessness of the torture as a means of getting truth (Antiphon, on the murder of Herodes, c. 7).

Torture was once used in all parts of modern Europe in judicial investigations, and it was applied to freemen. In Scotland it existed till the time of Queen Anne. In England it was in use till about the middle of the seventeenth century. Though it was never legally recognized in England, yet it was practised by virtue of the royal prerogative in many cases.

The torture of the Inquisition, the Holy Office, in matters of heresy and apostacy, the cruelties inflicted for supposed difference of religious opinion, exceed all that

Oppianici et ipsius mulieris multi, homines honesti atque omnibus rebus ornati. Tormentis omnibus vehementissime quaeritur. Quum essent animi servorum et spe et metu tentati ut aliquid in quaestione dicerent, tamen, ut arbitror, auctoritate advocatorum et vi tormentorum adducti, in veritate manserunt neque se quidquam scire dixerunt. Quaestio illo die de amicorum sententia dimissa est. Satis longo intervallo post iterum advocantur. Habetur de integro quaestio: nulla vis tormentorum acerrimorum praetermittitur: adversari advocati et jam vix ferre posse, furere crudelis atque importuna mulier sibi nequaquam ut sperasset ea quae cogitasset procedere. Quum jam tortor atque essent tormenta ipsa defessa, neque tamen illa finem facere vellet, quidam ex advocatis, homo et honoribus populi ornatus et summa virtute praeditus, intelligere se dixit non id agi ut verum inveniretur, sed ut aliquid falsi dicere cogerentur. Hoc postquam ceteri comprobarunt, ex omnium sententia constitutum est satis videri esse quaesitum. Redditur Oppianico Nicostratus: Larinum ipsa proficiscitur cum suis, maerens quod jam certe incolumem filium fore putabat, ad quem non modo verum crimen sed ne ficta quidem suspicio perveniret, et cui non modo aperta inimicorum oppugnatio sed ne occultae quidem matris insidiae nocere potuissent. Larinum postquam venit, quae a Stratone illo venenum antea viro suo datum sibi persuasum esse simulasset, instructam ei continuo et ornatam Larini medicinae exercendae caussa tabernam dedit. LXIV. Unum,

Greece or Rome ever did, even the persecutions of the emperors. The torture was applied to the accused by the Holy Office to make him confess his guilt. The crimes of paganism were not so great as the crimes of Christianity, which has shed more innocent blood in direct violation of the rule by which the Christian professes to live.

ut arbitror] This is said sarcastically. The presence of the people who were invited and the pain of the torture would naturally make the slaves eager to admit something and so be released from the torture. But Cicero chooses sarcastically to say that these two things made them persist in the truth, and so they were tortured more. I take this to be the true explanation of the passage, not Ernesti's. Ernesti says that if the reading is not corrupt, the sense is: "by the very force of the torture with which they were racked without any reason by a wicked woman, and moved by the indignity of the thing, they strengthened their resolution against pain and persisted in the truth." A man might do this, but we must suppose him to have strength enough to be as calm under pain as he might be if he were not tortured. The common notion is, and perhaps it is true, that most people if put to the torture would try to get relieved of the torture in any way that they could, whether it was by telling the truth or by lying.

adversari] The MSS. have 'adversarii,' which is easily corrected. Many editions have 'aversari;' 'they turned their faces away.' But they turned their faces to the torture, and opposed it, saying they could stand it no longer.

medicinae exercendae] Strato knew something of medicine, and the woman gave him a physic shop, supplied with the necessary stock (instructam, that is, cum instrumento) and fitted up. Strato was a slave and the shop belonged to his mistress, who would reap the profit, for it was a rule of

alterum, tertium annum Sassia quiescebat, ut velle atque optare aliquid calamitatis filio potius quam id struere et moliri videretur. Tum interim Hortensio, Q. Metello consulibus, ut hunc Oppianicum, aliud agentem ac nihil ejusmodi cogitantem, ad hanc accusationem detraheret, invito despondit ei filiam suam, illam quam ex genero susceperat, ut eum nuptiis alligatum simul et testamenti spe devinctum posset habere in potestate. Hoc ipso fere tempore Strato ille medicus domi furtum fecit et caedem ejusmodi. Quum esset in aedibus armarium in quo sciret esse nummorum aliquantum et auri, noctu duos conservos dormientes occidit in piscinamque dejecit: ipse armarii fundum exsecuit, et H-S. * * et auri quinque pondo abstulit, uno ex servis puero non grandi conscio. Furto postridie cognito, omnis suspicio in eos servos qui non comparebant commovebatur. Quum exsectio illa fundi in armario animadverteretur, quaerebant homines quonam modo fieri potuisset. Quidam ex amicis Sassiae recordatus est, se nuper in auctione quadam vidisse in rebus minutis aduncam ex omni parte dentatam et tortuosam venire serrulam, qua illud potuisse ita circumsecari videretur. Ne multa; perquiritur a coactoribus: invenitur ea serrula ad Stratonem pervenisse. Hoc initio suspicionis orto, et aperte insimulato Stratone, puer ille conscius pertimuit: rem omnem dominae indicavit, homines in piscina inventi sunt: Strato in vincula conjectus est, atque etiam in taberna ejus nummi nequaquam omnes reperiuntur. Constituitur quaestio de furto. Nam quid quisquam suspicari aliud potest? An hoc dicitis, armario expilato, pecunia ablata, non omni recuperata, occisis hominibus, institutam esse quaestionem de morte Oppianici? cui probatis? quid est quod minus veri simile proferre potuistis? Deinde, ut

Roman law that what a slave acquired he got for his owner; and a slave could always get for his owner, though he could not impose on him a loss. The slave was the agent of his master, and thus a great part of the law of principal and agent was worked out and made (Savigny, System ii. § 65, and Beylage iv; and iii. § 113, Handlungen durch Stellvertreter).

64. *aliud agentem*] This is explained by the words that follow. See c. 57.—Classen added the 'praenomen' Q. to Metello, and it is found in all the MSS.; but he says that this is no reason for adding the 'praenomen' to Hortensio, as Orelli did, for it was necessary to distinguish Q. Metellus the consul of B. C. 69 from L. Metellus the consul of the following year, who had Q. Marcius Rex for his colleague.

furtum fecit] The money was Sassia's, as it appears. The 'armarium' was used for keeping any thing, books, money, and the like.—'dentatam:' this reading is from Priscian. The MSS. have 'dentum' or 'dentium,' but Sylvius said that 'dentatam' was the true reading. This saw was toothed all round.—'coactoribus:' those who got in the money for the things sold at sales, as some explain it. They assisted at the sale; they were not the auctioneers, as some would have it. Such men would know all about a sale, who bought each article and what he gave for it. Horace's father was a 'coactor' (1 Sat. 6. v. 86).

omittam cetera, triennio post mortem Oppianici de ejus morte quaerebatur. Atque etiam incensa odio pristino Nicostratum eundem illum tum sine caussa in quaestionem postulavit. Oppianicus primo recusavit. Posteaquam illa abducturam se filiam, mutaturam esse testamentum, minaretur, mulieri crudelissimae servum fidelissimum, non in quaestionem tulit, sed plane ad supplicium dedit. LXV. Post triennium igitur agitata denique quaestio de viri morte habebatur; et de quibus servis habebatur? Nova, credo, res objecta, novi quidam homines in suspicionem vocati sunt? De Stratone et de Nicostrato. Quid, Romae quaesitum de istis hominibus non erat? Itane tandem mulier jam non morbo sed scelere furiosa, quum quaestionem habuisses Romae, quum de T. Annii, L. Rutilii, P. Saturii et ceterorum honestissimorum virorum sententia constitutum esset satis quaesitum videri, eadem de re triennio post, iisdem de hominibus, nullo adhibito, non dicam viro, ne colonum forte adfuisse dicatis, sed bono viro, in filii caput quaestionem habere conata es. An hoc dicitis—mihi enim venit in mentem quid dici possit, tametsi ab hoc non esse dictum mementote—quum haberetur de furto quaestio, Stratonem aliquid de veneno esse confessum. Hoc uno modo, judices, saepe multorum improbitate depressa veritas emergit, et innocentiae defensio interclusa respirat, quod aut ii, qui ad fraudem callidi sunt, non tantum audent quantum excogitant; aut illi, quorum eminet audacia atque projecta est, a consiliis malitiae deseruntur. Quod si aut confidens astutia aut

Posteaquam—minaretur,] This is the MSS. reading. See the note on this word 'posteaquam,' De Imp. Cn. Pomp. c. 4. We must suppose that Oppianicus was now the husband of Sassia's daughter, and the mother threatened to take her away from him. The threat must have been that she would persuade the daughter to leave her husband, for the mother had not the power over a daughter that a father had.

65. *habuisses*] S. T. A., Classen, Baiter. The other reading is 'habuisset.' In place of 'conata es,' S. T., there is also a reading 'conata est.' I have followed Baiter in the pointing of this sentence, 'Itane tandem' &c. 'Adfuisse' is the MSS. reading, and the meaning is so plain that the commentators ought not to have changed it to 'abfuisse.' Cicero says: "I will not say man, for fear you should reply that the 'colonus' was there, but I will say no good man was there." There was a man there, as Manutius says, Sassia's man, Albius. If there were no 'boni homines' at the 'quaestio,' the evidence would not be worth much.

tametsi ab hoc] S. T. Baiter has 'tametsi adhuc.' The rest of this sentence 'tametsi—mementote' is spoiled in some editions, where the reading is "tametsi ab hoc non esset dictum—quum," &c. After 'esse' was changed to 'esset,' 'mementote,' which had then no meaning, was omitted in the Juntine, and this edition was followed by others.

ii, qui ad fraudem—aut illi,] S. has 'hi' in both cases; but that can hardly be right. Classen and Baiter have 'ii qui—aut ii.' The opposition of 'is' and 'ille' is one of the commonest forms in Cicero (see c. 29. 31); and I believe that this is the true form here. The opposition of 'is' and 'ille,' and of 'hic' and 'ille,' is the opposition of two different sets of things, and so far, it is the same kind of opposition. But 'hic' and 'ille' present the things also in a con-

callida esset audacia, vix ullo iis obsisti modo posset. Utrum furtum factum non est? At nihil clarius Larini [fuit]. An ad Stratonem suspicio non pertinuit? At is et ex serrula insimulatus, et a puero conscio est indicatus. An id actum non est in quaerendo? Quae fuit igitur alia caussa quaerendi? an, id quod vobis dicendum est, et quod tum Sassia dictitavit; quum de furto quaereretur, tum Stratonem iisdem in tormentis dixisse de veneno. En hoc illud est quod ante dixi: mulier abundat audacia, consilio et ratione deficitur. Nam tabellae quaestionis plures proferuntur, quae recitatae vobisque editae sunt, illae ipsae quas tum obsignatas esse dixit; in quibus tabellis de furto nulla littera invenitur. Non venit in mentem, primum orationem Stratonis conscribere de furto, post aliquod dictum adjungere de veneno, quod non percontatione quaesitum sed per dolorem expressum videretur. Quaestio de furto est, veneni jam suspicio superiore quaestione sublata; quod ipsum haec eadem mulier judicarat: quae ut Romae de amicorum sententia statuerat satis esse quaesitum, postea per triennium maxime ex omnibus servis Stratonem illum dilexerat, in honore habuerat, commodis omnibus affecerat. Quum igitur de furto quaereretur, et eo furto quod ille sine controversia fecerat, tum ille de eo quod quaerebatur verbum nullum fecit? De veneno statim dixit? de furto, si non eo loco quo debuit, ne in extrema quidem aut media aut aliqua denique parte quaestionis verbum fecit ullum? LXVI. Jam videtis illam nefariam mulierem, judices, eadem manu, qua, si detur potestas, interficere filium cupiat, hanc fictam quaestionem con-

trast of nearness and remoteness, real or supposed: and 'is' and 'ille' simply present the things as different.

Cicero has many remarks founded on the common understanding and common observation of men; which remarks, when they are appropriate, give life to an orator's address. Cunning is generally not audacious; and audacity often fails for want of skill. It is certainly rare to find combined the boldness and the art which are necessary for the accomplishment of a malicious design. There are more cunning men than bold men; lies and slander are the arms of the cunning, and are more dangerous than the violence and fury of the audacious.

The expression 'a consiliis malitiae deseruntur' is singular. In our language it cannot be tolerated. But the Romans were used to personify qualities, as Fides, Pudicitia, and the like. So Malitia becomes a person; and the audacious are deserted by the prudence of Malitia, of her whose characteristic is the badness of the purpose. Or Cicero may mean that they fail in the prudence or the plan which is necessary to accomplish their wicked design. It is not easy to explain this passage.

dixisse de veneno.] 'Dixisse' is Schütz's conjecture, confirmed by S. T. The common reading is 'dixit.' If we take 'dixisse,' the sentence assumes a different form. Classen says: "Confirmant h. l. (quod vix iterum factum esse credo) egregii codd. nostri conjecturam Schützii."

tabellae quaestionis] We learn that the evidence obtained by torture was taken down in writing, and sealed with the seals of the witnesses who were present (c. 66).—'suspicio:' S. T. The other reading is 'suspicione.'

scripsisse. Atque istam ipsam quaestionem dicite quis obsignarit? Unum aliquem nominate. Neminem reperietis, nisi forte ejusmodi hominem, quem ego proferri malim quam neminem nominari. Quid ais, T. Atti? Tu periculum capitis, tu indicium sceleris, tu fortunas alterius litteris conscriptas in judicium afferas, neque earum auctorem litterarum, neque obsignatorem neque testem ullum nominabis; et quam tu pestem innocentissimo filio de matris sinu deprompseris, hanc hi tales viri comprobabunt? Esto: in tabellis nihil est auctoritatis. Quid, ipsa quaestio judicibus, quid, amicis hospitibusque Oppianici, quos adhibuerat antea, quid, huic tandem ipsi tempori cur non reservata est? Quid istis hominibus factum est Stratone et Nicostrato? Quaero abs te, Oppianice, servo tuo Nicostrato quid factum esse dicas; quem tu, quum hunc brevi tempore accusaturus esses, Romam deducere, dare potestatem indicandi, incolumem denique servare quaestioni, servare his judicibus, servare huic tempori debuisti. Nam Stratonem quidem, judices, in crucem esse actum exsecta scitote lingua; quod nemo

66. *quis obsignarit?*] The reading of the MSS., and it is necessary. But some editions have 'quis obsignavit.' The letters *v r* are often confounded in these verbal forms.

quam neminem] This is Albius again, the strong 'colonus.' Cicero would rather it should be said that Albius was a witness to the evidence than that nobody was; for if Albius was a witness, it was a proof of the villainy of Sassia.—'tu indicium:' 'tu judicium,' Classen.

afferas,] This is the reading of the MSS. The reading 'afferes' is of course Latin, but there is a nice distinction between the two tenses. "Inest admiratio quaedam in conjunctivo" (Classen). I do not think that this is exactly the true explanation. The future is definite, and Cicero uses it in this sentence (nominabis, comprobabunt). The conjunctive (afferas) is indefinite. It means: "would you do such a thing as to consign to writing and bring before a court that which puts in peril a man's condition (periculum capitis), that which is evidence of crime, all his interests, and will you not give the names of those who vouch for what is written, will you not name either sealer or witness?" —'reservata:' 'servata,' S. T. Baiter.

in crucem] The punishment of slaves, as it has been explained before. The power of putting a slave to death was taken away by a 'constitutio' of Antoninus: "qui sine caussa servum suum occiderit, non minus teneri jubetur quam qui alienum servum occiderit" (Gaius i. 53). The same emperor also gave a certain privilege of sanctuary to slaves who were ill-treated by their masters.

The monstrous crime of Sassia appears almost incredible, but modern times have had their Sassias too. Cruelty is not confined to time or country. The Roman woman's crime was surpassed by the cruelty of a French court of justice in the eighteenth century, which condemned a young man to a horrible punishment for not taking off his hat when a procession passed, and for singing an indecent song, and a few matters of that kind, which were proved by very insufficient evidence. The judgment of the court of Abbeville was that one of the accused, who was only eighteen years of age, should have his tongue cut off to the root; and the way of doing this was that, if the patient did not present his tongue himself, it was laid hold of with iron pincers and pulled out: his right hand was to be cut off at the door of the principal church; he was then to be taken in a tumbril to the market-place, to be fastened to a stake with a chain, and to be burnt slowly. Luckily the young man escaped. But another victim, who was involved in the same charges, the Chevalier de la Barre, was executed after being cruelly tortured. (Rélation de la mort du chevalier de la Barre, Voltaire, Oeuvres Complètes. Politique et Législation.)

Larinatium est qui nesciat. Timuit mulier amens non suam conscientiam, non odium municipum, non famam omnium; sed quasi non omnes ejus sceleris testes essent futuri, sic metuit ne condemnaretur extrema servi voce morientis.

Quod hoc portentum, dii immortales, quod tantum monstrum in ullis locis, quod tam infestum scelus et immane, aut unde natum esse dicamus? Jam enim videtis profecto, judices, non sine necessariis me ac maximis caussis principio orationis meae de matre dixisse. Nihil est enim mali, nihil sceleris, quod illa non ab initio filio voluerit, optaverit, cogitaverit, effecerit. Mitto illam primam libidinis injuriam, mitto nefarias generi nuptias, mitto cupiditate matris expulsam ex matrimonio filiam; quae nondum ad hujusce vitae periculum, sed ad commune familiae dedecus pertinebant. Nihil de alteris Oppianici nuptiis queror; quarum illa quum obsides filios ab eo mortuos accepisset, tum denique in familiae luctum atque in privignorum funus nupsit. Praetereo quod A. Aurium Melinum, cujus illa quondam socrus, paullo ante uxor fuisset, quum Oppianici esse opera proscriptum occisumque cognosset, eam sibi domum sedemque [conjugii] delegit, in qua quotidie superioris viri mortis indicia et spolia fortunarum videret. Illud primum queror, de illo scelere quod nunc denique patefactum est Fabriciani veneni; quod jam tum recens suspiciosum ceteris, huic incredibile, nunc vero apertum jam omnibus ac manifestum videtur. Non est profecto de illo veneno celata mater: nihil est ab Oppianico sine consilio mulieris cogitatum; quod si esset, certe postea deprehensa re non illa ut a viro improbo discessisset, sed ut a crudelissimo hoste fugisset, domumque illam in perpetuum scelere omni affluentem reliquisset. Non modo id non fecit, sed ab illo tempore nullum locum praetermisit in quo non strueret insidias aliquas, ac dies omnes atque noctes tota mente mater de pernicie filii cogitaret. Quae primum ut illum confirmaret Oppianicum accusatorem filio suo, donis, muneribus, collocatione filiae, spe hereditatis obstrinxit. LXVII. Ita quod apud ceteros, novis inter propinquos susceptis inimicitiis, saepe fieri divortia atque affinitatum discidia videmus, haec mulier satis firmum accusatorem filio suo fore neminem putavit, nisi qui in matrimonium sororem ejus antea duxisset. Ceteri novis

si esset,] S. T. The other reading is 'nisi.'

67. *Ita quod*] The reading of S. T. F. M., which in other MSS. is corrupted into 'Itaque.' It is singular how this 'quod' has been misunderstood. The construction is 'Ita quod—saepe fieri—videmus,' and the words 'divortia—discidia,' expound the 'quod.' See Pro Cluentio, c. 9, notes. In place of 'videmus,' S. T. F. have 'vidimus.'

affinitatibus adducti veteres inimicitias saepe deponunt: illa sibi ad confirmandas inimicitias affinitatis conjunctionem pignori fore putavit. Neque in eo solum diligens fuit ut accusatorem filio suo compararet; sed etiam cogitavit quibus eum rebus armaret. Hinc enim illae sollicitationes servorum et minis et promissis, hinc illae infinitae crudelissimaeque de morte Oppianici quaestiones; quibus finem aliquando non mulieris modus sed amicorum auctoritas fecit. Ab eodem scelere illae triennio post habitae Larini quaestiones; ejusdem amentiae falsae conscriptiones quaestionum; ex eodem furore etiam illa conscelerata exsectio linguae; totius denique hujus ab illa est et inventa et adornata comparatio criminis. Atque his rebus quum instructum accusatorem filio suo Romam misisset, ipsa paullisper conquirendorum et conducendorum testium caussa Larini est commorata; postea autem quam appropinquare hujus judicium ei nuntiatum est, confestim huc advolavit ne aut accusatoribus diligentia aut pecunia testibus deesset, aut ne forte mater hoc sibi optatissimum spectaculum hujus sordium atque luctus et tanti squaloris amitteret. LXVIII. Jam vero quod iter Romam ejus mulieris fuisse existimatis? quod ego propter vicinitatem Aquinatium et Fabraternorum ex multis audivi et comperi; quos concursus in his oppidis? quantos et virorum et mulierum gemitus esse factos? mulierem quamdam Larino, atque illam usque a mari supero Romam proficisci cum magno comitatu et pecunia, quo facilius circumvenire judicio capitis atque opprimere filium possit. Nemo erat illorum, paene dicam, quin expiandum illum locum esse arbitraretur quacumque illa iter fecisset; nemo quin terram ipsam violari,

mulieris modus] "Est modus in rebus," as Horace says. All things have their natural limit or measure, except a woman's revenge and her wickedness. Sassia had no 'modus.' It was no moderation, no reason, in the woman that put an end to the torture, but her friends' authority.

misisset, ipsa] The order in S. T. The other MSS. have 'ipsa misisset:' so small a matter makes the difference between sense and nonsense. 'Ipsa' before 'misisset' would be intelligible, if the next clause spoke of somebody else; at least, one may suppose forms of this sentence in which 'ipsa misisset' would be right. But here Cicero says, after sending the accuser well furnished to Rome, she, 'ipsa,' stayed a little while at Larinum.

postea autem quam] S. T. The others have 'cum' for 'quam,' but 'cum' or 'quum' is a blunder. 'Posteaquam' or 'postea' separated from 'quam' by another word is the genuine text. 'Post' and 'quam' often come together (postquam). They are also often separated, as in 'post diem tertium quam,' and such like expressions. This use of 'quam' in Latin would require a particular exposition.

68. *Fabraternorum*] This is the emendation of Beroaldus. S. T. F. A. have the corrupt form Aftraternorum, which is much more likely to be a corruption of Fabraternorum than of the word Venafranorum, which is printed in most editions. Cicero heard something of all this at Arpinum, which is not far from Aquinum and Fabrateria, and nearer to these two places than to Venafrum. The woman came through Aquinum and Fabrateria by the Via Latina on her road to Rome.

quae mater est omnium, vestigiis consceleratae matris putaret. Itaque nullo in oppido consistendi potestas ei fuit: nemo ex tot hospitibus inventus est qui non contagionem aspectus fugeret. Nocti se potius ac solitudini quam ulli aut urbi aut hospiti committebat. Nunc vero quid agat, quid moliatur, quid denique quotidie cogitet, quem ignorare nostrum putat? Quos appellarit, quibus pecuniam promiserit, quorum fidem pretio labefactare conata sit, tenemus. Quin etiam nocturna sacrificia, quae putet occultiora esse, sceleratasque ejus preces et nefaria vota cognovimus; quibus illa etiam deos immortales de suo scelere testatur, neque intelligit pietate et religione et justis precibus deorum mentes, non contaminata superstitione neque ad scelus perficiendum caesis hostiis posse placari. Cujus ego furorem atque crudelitatem deos immortales a suis aris atque templis aspernatos esse confido.

LXIX. Vos, judices, quos huic A. Cluentio [quosdam alios] deos ad omne vitae tempus fortuna esse voluit, hujus importunitatem matris a filii capite depellite. Multi saepe in judicando peccata liberûm parentum misericordiae concesserunt; vos ne hujus honestissime actam vitam matris crudelitati condonetis rogamus, praesertim quum ex altera parte totum municipium videre possitis. Omnes scitote, judices, incredibile dictu est, sed a me verissime dicetur, omnes Larinates qui valuerunt venisse Romam ut hunc studio frequentiaque sua quantum possent in tanto ejus periculo sublevarent. Pueris illud hoc tempore et mulieribus oppidum scitote esse traditum, idque in praesentia communi Italiae pace in domesticis copiis esse totum. Quos tamen ipsos aeque et eos

quae putet] S., Baiter: 'quae putat,' the other reading.

superstitione] It is defined by Cicero, De Nat. Deorum i. 42, where he is speaking of Protagoras: "Cui neutrum licuerit, nec esse deos nec non esse: Horum enim sententiae omnium non modo superstitionem tollunt, in qua inest timor inanis deorum, sed etiam religionem, quae deorum pio cultu continetur." See c. 61, note on 'ineptis fabulis.'

69. [*quosdam alios*] I have only enclosed these words thus because I do not know what to do with them. Baiter, following Halm, writes "A. Cluentio quasi aliquos deos." He gives these various readings: 'quos alios,' T.; 'quosdam alios,' Lambinus and Orelli; 'alios,' S. T. and the edition of Ascensius, Halm's conjecture gives a sufficient meaning, but that does not prove that it is Cicero's words. I suppose that 'quosdam' is an emendation. The reading might be "A. Cluentio, si quos alios deos."

in domesticis—totum] This reading of the MSS. was corrupted by Naugerius into 'tutum.' 'Emendavit Naugerius,' says Baiter, as many other passages have been amended by spoiling them. Baiter accepts this emendation. Classen has kept the genuine word, which gives a proper sense to the passage: "the town is altogether in the protection of the families." There is no sense in saying it is "safe in the protection of its families." Cicero ends the sentence with a word which does not express the safety of the town, for there was no doubt about that, but expresses the fact of its being completely abandoned by the men, and given up entirely (totum) to the women and youths.

quos praesentes videtis, hujus exspectatio judicii dies noctesque sollicitat. Non illi vos de unius municipis fortunis arbitrantur, sed de totius municipii statu, dignitate, commodisque omnibus sententias esse laturos. Summa est enim, judices, hominis in communem municipii rem diligentia, in singulos municipes benignitas, in omnes homines justitia et fides. Praeterea nobilitatem illam inter suos, locumque a majoribus traditum sic tuetur ut majorum gravitatem, constantiam, gratiam, liberalitatem assequatur. Itaque iis cum verbis publice laudant, ut non solum testimonium suum judiciumque significent, verum etiam curam animi ac dolorem. Quae dum laudatio recitatur, vos, quaeso, qui eam detulistis, assurgite. Ex lacrimis horum, judices, existimare potestis omnes haec decuriones decrevisse lacrimantes. Age vero, vicinorum quantum studium, quam incredibilis benevolentia, quanta cura est! Non illi in libellis laudationem decretam miserunt, sed homines honestissimos quos nossemus omnes huc frequentes adesse et hunc praesentes laudare voluerunt. Adsunt Frentani, homines nobilissimi; Marrucini item pari dignitate: Teano Apulo atque Luceria equites

justitia] His 'fair dealing.' We may say 'justice' also, for 'justice' signifies both what is just and the disposition of a man who does what is just. The Roman definition of 'justitia' which appears at the beginning of the Institutiones of Justinian (i. Tit. 1) is this: "Justitia est constans et perpetua voluntas jus suum cuique tribuens." Cicero expresses it thus: "Animi affectio suum cuique tribuens" (De Fin. v. 23). The definition of Simonides in Plato is this: τὸ τὰ ὀφειλόμενα ἑκάστῳ ἀποδιδόναι δίκαιόν ἐστι. All these definitions agree in making 'justitia' to be a certain disposition of the mind towards others. In order to make the definition useful, we must know what that is which we are to render to others; the determination of which belongs both to morality and to law.

publice laudant,] People were sent by the town to speak in favour of Cluentius. Such public testimonials were sometimes written and sealed with the seals of the Decuriones or Senate. See Vol. I. Verr. ii. 5. c. 22. After 'assurgite' there is printed in most editions—Laudatio Cluentii ex Decurionum Larinatium Decreto.—"Ex mg. Lambini," says Baiter. Those who brought the 'laudatio' are asked to stand up, and as they were in tears, the conclusion is that the Decuriones were in tears when they passed the resolution for the 'laudatio.' The conclusion, however, is not certain. There was in ancient times a much greater readiness to produce tears than in modern times, a thing which depends partly on custom, and more perhaps on nervous excitability and other physical causes. Even L. Sulla, the ferocious butcher of his fellow-citizens, was easily moved to tears (Plutarch, Sulla, c. 30); and it is a proof of Plutarch's sagacity that he did not let this trait in Sulla's character pass without remark.

I transcribe a note of Klotz on the standing up:—"It was a very natural rule, that every person who gave testimony, whether he was going to speak himself or whether his testimony was to be read by the Praeco, stood up that the Judices might see him. So it is said c. 60: 'tu autem nisi molestum est, paullisper exsurge.' Such rules, which in all times have been the same, and are understood as a matter of course in the passages that relate to them, we have thought ourselves bound to mention only sparingly." Such is a sample of note-making, tedious talk without a purpose, of which there is a great deal in Klotz mixed up with some good matter.

laudationem decretam] S. T., Classen, Baiter; undoubtedly the true reading. The common reading is 'laudationum decreta,' which is bad.—'Frentani:' 'Ferentani,' F., Baiter.

Romanos, honestissimos homines, laudatores videtis: Boviano totoque ex Samnio quum laudationes honestissimae missae sunt, tum homines amplissimi nobilissimique venerunt. Jam qui in agro Larinati praedia, qui negotia, qui res pecuarias habent, honesti homines et summo splendore praediti, difficile dictu est quam sint solliciti, quam laborent. Non multi mihi ab uno sic diligi videntur ut hic ab his universis. LXX. Quam non abesse ab hujus judicio L. Volusienum, summo splendore hominem ac virtute praeditum, vellem. Quam vellem praesentem posse P. Helvidium Rufum, equitem Romanum, omnium ornatissimum, nominare; qui quum hujus caussa dies noctesque vigilaret, et quum me hanc caussam doceret, in morbum gravem periculosumque incidit, in quo tamen non minus de capite hujus quam de sua vita laborat. Cn. Tudicii senatoris, viri optimi et honestissimi, par studium ex testimonio et laudatione cognoscetis. Eadem spe, sed majore verecundia, de te, P. Volumni, quoniam judex es in A. Cluentium, dicimus. Et ne longum sit, omnium vicinorum summam esse in hunc benevolentiam confirmamus. Horum omnium studium, curam, diligentiam, meumque una laborem qui totam hanc caussam vetere instituto solus peroravi, vestramque simul, judices, aequitatem et mansuetudinem una mater oppugnat. At quae mater? Quam caecam crudelitate et scelere ferri videtis; cujus cupiditatem nulla umquam turpitudo retardavit, quae vitiis animi in deterrimas partes jura hominum convertit omnia: cujus ea stultitia est ut eam nemo hominem, ea vis ut nemo feminam, ea crudelitas ut nemo matrem appellare

negotia,] He enumerates 'negotiatiores' at Larinum, farmers and flockmasters (qui res pecuarias habent). Larinum is one of the parts of Italy where wool was grown. The sheep fed on the hills at one season, and in the plains at another. Classen has 'pecuniarias,' the reading of all the MSS.; but not the true reading, I think. The edition of Ascensius (1511) has 'pecuarias.' Graevius says that it is written 'pecuarias' in an edition of 1498.

70. *Quam non abesse,* &c.] The MSS. reading is 'Quando non,' &c. There is probably something wrong in the beginning of this chapter. Classen thinks that what follows approaches nearer to the MSS. readings, or what they indicate: "Quam doleo abesse ab hujus judicio L. Volusienum —praeditum. Vellem praesentem possem P. Helvidium Rufum . . . nominare." He adds: "Sed non placuit incerta dare pro certis." Baiter has taken Classen's 'incerta,' and put it all in his text.

solus peroravi,] In Cicero's time there were generally several 'accusatores,' or one 'accusator' and several 'subscriptores,' and also several 'patroni' for the defence. This appears from Cicero's orations.

jura hominum] It is difficult to translate this. It may be, as some suppose, equivalent to 'jus humanum;' but that fact does not make the expression of the meaning easier. Cicero seems to allude to her perversion of human relations; she was mother-in-law of a man and then became his wife; she made her son-in-law her husband. This was a perversion of the legal relations that subsist among mankind. — 'hominem:' a 'human being.' She had not understanding enough to be called a 'human being.' But she does not seem to have been deficient in understanding, unless we consider immorality to be a defect of understanding; which however it is not.

possit. Atque etiam nomina necessitudinum, non solum naturae nomen et jura mutavit: uxor generi, noverca filii, filiae pellex, eo jam denique adducta est ut sibi praeter formam nihil ad similitudinem hominis reservarit. Quare, judices, si scelus odistis, prohibete aditum matris a filii sanguine, date parenti hunc incredibilem dolorem ex salute, ex victoria liberûm; patimini matrem, ne orbata filio laetetur, victam potius vestra aequitate discedere. Sin autem, id quod vestra natura postulat, pudorem, veritatem, virtutemque diligitis, levate hunc aliquando supplicem vestrum, judices, tot annos in falsa invidia periculisque versatum, qui nunc primum post illam flammam aliorum facto et cupiditate excitatam spe vestrae aequitatis erigere animum et paullum respirare a metu coepit; cui posita sunt in vobis omnia; quem servatum esse plurimi cupiunt, servare soli vos potestis. Orat vos Habitus, judices, et flens obsecrat ne se invidiae quae in judiciis valere non debet, ne matri cujus vota et preces a vestris mentibus repudiare debetis, ne Oppianico homini nefario condemnato jam et mortuo, condonetis. LXXI. Quod si qua calamitas hunc in hoc judicio afflixerit innocentem, nae iste miser, si, id quod difficile factu est, in vita remanebit, saepe et multum queretur deprehensum esse illud quondam Fabricianum venenum. Quod si tum indicatum non esset, non huic aerumnosissimo venenum illud fuisset, sed multorum medicamentum laborum; postremo etiam fortassis mater, exsequias illius funeris prosecuta, mortem se filii lugere simulasset. Nunc vero quid erit profectum, nisi ut hujus ex mediis mortis insidiis vita ad luctum conservata, mors sepulcro patris privata esse videatur? Satis diu fuit in miseriis, judices: satis multos annos ex invidia laboravit. Nemo huic tam iniquus praeter parentem fuit, cujus animum non jam expletum esse putemus: vos, qui aequi estis

reservarit.] 'reservaret:' S. T., Classen.

aditum matris] If he had said 'matrem a filii sanguine,' the expression would have been more simple, or the idea: 'keep the mother away from her son's life.' This is just the form that Caesar uses when he says (B. G. i. 11), "ab oppidis vim hostium prohiberi." So Cicero might have said 'vim matris:' but he says 'aditum matris,' 'the mother's approach.'

71. *laborum:*] Baiter has 'moerorum,' though all the MSS. have 'laborum.' 'Moerorum' comes from a fragment of a grammarian, who cites this passage of Cicero as evidence of the use of 'moeror' in the plural number.

conservata] The MSS. reading, which there was no reason for changing into 'reservata,' which in fact spoils the meaning. 'Reservare' is to keep for some particular purpose (Vol. I. Verr. ii. 5. c. 30). Here he was saved from death only to have sorrow.

sepulcro patris] If he was condemned and left his country, he would not be buried with his fathers.

animum non] Baiter follows S. T. in writing 'non animum;' but S. T. are not infallible.

omnibus, qui, ut quisque crudelissime oppugnatur, eum lenissime sublevatis, conservate A. Cluentium; restituite incolumem municipio; amicis, vicinis, hospitibus, quorum studia videtis, reddite; vobis in perpetuum liberisque vestris obstringite. Vestrum est hoc, judices, vestrae dignitatis, vestrae clementiae: recte hoc repetitur a vobis, ut virum optimum atque innocentissimum plurimisque mortalibus carum atque jucundissimum his aliquando calamitatibus liberetis, ut omnes intelligant, in contionibus esse invidiae locum, in judiciis veritati.

FINIS

DE LEGE AGRARIA

ORATIONES.

INTRODUCTION.

The orations of Cicero against the Agraria Lex of Rullus cannot be understood without a knowledge of the nature of the Roman revenue. Rullus proposed to sell nearly all the property of the state, and to apply the produce of the sale to the purchase of lands in Italy. The state property was of various kinds, and at this time (B. C. 63) it was chiefly in the provinces. Within the present century the nature of the Roman revenue has been more carefully investigated; and though there still remain a few doubtful points, we can state with tolerable accuracy what it was. Marquardt, who has continued W. A. Becker's useful work (Handbuch der Römischen Alterthümer), has put the matter in a small compass, and has given (vol. iii.) most of the references both to the ancient and the modern authorities. I have used what he has collected, and I have added what I thought necessary. The edition of the Gromatici Veteres (ed. Lachmann) is useful. The volume entitled "Die Schriften der Römischen Feldmesser, &c., von F. Blume, K. Lachmann, und A. Rudorff," contains an essay by Rudorff on the 'Gromatische Institutionen,' which treats of a subject that is beyond the purpose of this Introduction. It contains however some remarks on the Public Land and on Coloniae, and some statements which are not true.

Something has been said of the Roman Public Land and the sources of revenue in the notes on the Verrine orations; but it is necessary to explain the matter here with more method, even though something may be repeated that has been said before. Some things will be stated more fully, and perhaps errors may be corrected.

The original Roman territory was a small tract about Rome. In the time of Cicero the foreign possessions of the Roman people were im-

mense; and all had been won by the sword. From the earliest period of her history, so far as we know it, Rome was always at war, sometimes fighting for her existence, but always extending her dominion. She believed it to be her destiny to conquer the world, and she accomplished it. The conquest of Italy was the work of centuries; and the means for the subjugation of the peninsula were derived from Italy herself. The acquisition of foreign countries supplied Rome with fresh means, and the conquest of one country gave her the power of adding another to her subject states. The wealth of the provinces enriched both the Roman state and the Roman citizen. But the civil wars of the last century exhausted even these great resources, and when the Roman Republic became a Monarchy under the Caesars, both the general administration and the management of the public revenue underwent many changes. At present we have only to consider the Republican period.

The division of things into public and private (Publica, Privata) was an old, original distinction at Rome, which in fact must exist in every state. Those things are Public or may be called Public property, which are set apart for public use, as roads, rivers, and buildings for public purposes. The public property of the Roman state in its infancy could not be much; but it was increased by conquest. It was a Roman principle, or rather a universal rule in antiquity (Gaius ii. 69), that a conquered people lost all that they had. If any thing was left to them, they owed it to the mercy and generosity of the conqueror. The conquered people were sometimes killed or they were made slaves (Livy vii. 19; xxxi. 27). Their moveable property was booty (praeda), and it was carried off. Their land became the property of the Roman state. This land which was taken from the enemy was Ager Publicus; and land so taken and made Publicus was said 'Publicari' (Dig. 49. 15. 20. § 1). Even the terms of a formal surrender to the Roman people, a Deditio, as it was named, comprehended a complete abandonment of all that the people had, as we see by the formula of Deditio in Livy (i. 38). It comprehended city, lands, water, boundaries, temples, utensils, every thing that was appropriated to the purposes of religion and the use of man. But the Deditio saved a city from the fury of the soldiers and from being sacked (Livy xxxvii. 32).

Rome was a town with a small territory; and the Italian peoples who are comprehended under one name, as Latini, Volsci, Hernici, and others, were a confederacy of such towns. Each town had its territory, consisting of arable land, which was private property, and of public land, which was used for pasture. There are good reasons for affirming that all these old Italian towns had their Publicus ager, or common pasture land on which each proprietor of cultivated land would have a right to

feed his cattle and cut wood. This old institution of common land, as it was called (compascua, communalia, pro indiviso), existed in Italy long after Rome was mistress of the peninsula (Frontin. de Contr. p. 15, ed. Lachmann). If the Romans captured a town and destroyed the people, all the land would be vacant and ready for new occupants. When a conquered people came to terms with the Romans, they lost a part of their lands, generally a third, and sometimes two-thirds, or even the whole (Livy i. 15; ii. 25; ii. 41). It is not said how things were settled when a town lost a part of its territory. The Romans would not take only the pasture lands, only the hills and wastes, which were fit for nothing but pasturage. They took arable land too. When they took all, the people must of course perish, if they were not made slaves; or they must seek refuge in some other place. This, which seems so difficult for us to understand or explain, was not so difficult to the Greeks and Romans, who turned people out of their lands without troubling themselves whether they perished or not (Thucyd. ii. 27; Dionys. Antiq. Rom. ix. 60, the case of Antium). Even in modern warfare a town may be destroyed and the inhabitants compelled to seek a home where they can. The story about Antium, as it is told by Dionysius, is intelligible and probably true. The Romans wished to send settlers to Antium, which had submitted to their arms, but the plebeians and the poor did not like to go. As the proper number for a Colonia could not be found at Rome, the senate permitted Latini and Hernici to join the Colonia. The Triumviri divided part of the lands of Antium among the colonists and left a part to the Antiates (Dionys. ix. 59). The historian then says (ix. 60), that "those Antiates who had houses and lands stayed in the country, cultivating both what had been set apart for them and what had been appropriated to the 'coloni,' on certain fixed terms and portions, which they paid to them out of the produce. But those who had nothing went from the city, and being readily received by the Aequi, they made excursions from the country of the Aequi and plundered the lands of the Latini." The Roman settlers then employed the Antiates, who were allowed to stay at home, in cultivating the allotments made to the settlers, who received a fixed share of the produce. It was a métayer system. It seems that all the land was parcelled out, and in some way which is not explained a certain number of the Antiates were selected, to whom a part of the land was granted. It was better for the settlers that some of the Antiates should be left, for the settlers thus got their allotments cultivated without any trouble. The Athenians did the same with Lesbos when they parcelled out the land among Athenian citizens, to whom the Lesbians paid a rent for the use of the land which had once been their own. This plain statement in Dionysius is not a thing likely to be invented. He found it in some

old authority. It is perfectly intelligible, if it is only understood in its simple sense, without being perverted by modern ingenuity.

The Romans, as we have seen, established colonies in the conquered territories. The colonists had land assigned to them: they lived in the old towns, and either cultivated their lands or let them to some of the conquered people. As a man must either cultivate his land, or let it if he intends to get any thing out of it, we might make this statement even without evidence; but the case of the colonists of Antium is an instance of the Roman colonists letting their land for a share of the produce.

These old Coloniæ were like garrisons placed to secure the subjection of the conquered people. Some of the land acquired by conquest was sold, though it is probable that this was not often done in the early period of the Roman conquests, for it would not be easy to find purchasers. Lands which were sold were called Quaestorii, because it was the business of the Quaestores to sell them (Hyginus, in Grom. Vet. ed. Lach. p. 115). Other lands were let by the Censors for a rent, as it is said by Appian (B. C. 1. 7). The Roman definition of a Colonia is a body of citizens or Socii sent out by the State (publico consilio), to form a Res Publica or political community. It was not a community independent of Rome, but a part of the State. It was designed to put a Roman population (Romana colonia) in the place of that which was destroyed or driven out; or a Latin population (Latina colonia) which should be subject to Rome. The destruction of the old population made way for the Roman population of Italy. A Roman or a Latin was planted where another man had lived before.

The amount assigned to a colonist (assignatus, marked out) was generally two 'jugera,' a small amount, but as much as a man could cultivate by his own hands, or with the assistance of his family. A portion of land was reserved for common pasturage; and another portion was set apart for religious and public purposes. There was land which was not assigned or given in ownership, or applied to any purposes: there was often more land than the State could dispose of. It could not be sold as public land is in the United States of North America and in the British colonies, because there were not buyers enough. Those who had capital, and they were the only persons who could buy the land, got hold of public lands, land which was not assigned, on easier terms than by purchase. They were allowed to occupy waste lands which belonged to the State on payment of a tenth of the grain produce and a fifth of the produce of fruit trees, the vine, the olive, and others. Waste land does not mean barren land: it means land which is not in cultivation. They also paid a fixed rate for animals which fed on the public pasture lands, which were generally the hills and forests, such places as were not adapted to the plough, or to vineyards or olive yards (Appian, B. C. i. 7).

It is not said when this payment of a tenth and of the other charges was established: but if we interpret Appian's words fairly, he understood the payment to be as old as the existence of the Ager Publicus. The lands thus occupied were called 'occupatorii,' a name which explains itself, or Arcifinales, "land which was not surveyed and measured," (Siculus Flaccus, ed. Lach. p. 138; Frontinus, De Agr. qual. p. 5). But this occupation gave no title of ownership, and a title could not be acquired by use (usucapio). The land still belonged to the Roman people (Frontinus, De Controv. Agr. p. 50; Agennius, p. 82; Cicero, contra Rullum, iii. 3). The land which was assigned ('assignatus') became private property; and it is called Ager or Ager Privatus, as opposed to that which was merely held by permission, which kind of occupation was called Possessio. Some modern writers refuse to believe the ancient writers, such as Appian (B. C. i. 7) when they tell us how the Possessores got possession of the public land. But what the ancient writers tell us is much more intelligible, much more probable than any of the assumptions that I have seen in any modern writer. The statements of the ancient writers are simply this; that all the public land was not disposed of. Some was assigned, some was sold, some was let; and we may certainly conclude that what was sold and let was that which for different reasons would easiest find purchasers and tenants. It is not surprizing if there were tracts of good land, which could not find either purchasers or tenants, for purchasers and tenants must have capital, and land may be more plentiful than capital, as it is in some countries now. If Italy was very populous when the Romans began their conquering career, in which they never stopped, war, and famine, and pestilence, the consequence of war, would thin its population, and Rome itself, whose men were consumed in war, did not reproduce them fast enough to fill all Italy. If the enjoyment of the lands, which were left unsurveyed, unsold, unlet, was the privilege of a class, of the Roman 'nobiles,' or even if all who had capital might use them, we need not concern ourselves much as to the way in which they got possession of the land. So long as there was enough, a man might take what he wanted (Dionys. viii. 69, &c.). When the number who were willing or able to occupy public land became larger, we may suppose that some mode of occupation could be settled just as easily as land could be sold or let[1]. It is certain that much of the Italian land was used for feeding, and it was, as already observed, the only way in which distant lands could be profitably used. The occupiers of course placed people on the land to look after their cattle, their clients it may be; and such arrangements would be made with these clients as would bring profit to the capitalist

[1] Dionysius, Antiq. Rom. ix. 51, 52.

without trouble. The men on the waste lands, the 'clientes,' or whatever they were, would cultivate portions as a matter of course, and build huts; and they would begin to look on what they improved as their own in a manner, and think that they had as good right to hold it against their masters, as their masters thought they had to hold their possessions against the state. In the writings of the Agrimensores (Hyginus, De Condic. Agr. pp. 115, 138, ed. Lach.), we find it distinctly stated that each man occupied of this public land just what he liked, and often took more than he could cultivate, as a man certainly would do, and in the hope that he should cultivate it some time.

This Possessio of the Ager Publicus is mentioned as a privilege of the Patres, of the class of nobles, as opposed to another class named the Plebs. The statement of Livy is very precise, and indeed all that he says about the Ager Publicus is perfectly clear. Those who refuse to accept the statements of a Roman writer, who could not be ignorant about a matter which had agitated Rome for centuries, cannot complain if we refuse to accept their guesses about a thing of which they know nothing except what they learn from the ancient writers themselves. Livy (iv. 48) says of the tribuni pl. Sp. Maecilius and Metilius, "that they promulgated a Rogatio for dividing the land taken from the enemy in shares among the people, and that the effect of this Plebiscitum was to declare the fortunes of a large part of the nobles to be public property, for there was scarcely any land that had not been won by the sword, which was naturally the case with a city that had been planted on a foreign soil, nor did any except plebeians hold land which had been sold or assigned by the state." The 'nobiles' got land on better terms than the Plebs, except when an assignment was made; and the assignments were only small allotments such as a noble would not care to have, even if he might have them. He got the use of large tracts on easier terms. The historical value of Dionysius' testimony may not be considered very great, but he, like Livy, supposed that a large part of the land which the Romans acquired by conquest was occupied by men who neither bought it nor received it by assignment. It was alleged by those whom he represents as complaining that they got nothing (Antiq. Rom. x. 37), that these men had no title to the land, an assertion which is by no means inconsistent with the fact of those who had the land maintaining that they had a title to the use of it. The Possessores with the aid of their clients resisted the enactment of a Lex Agraria (x. 40, 41), from which we infer that the clients of the nobles had an interest in opposing such a Lex, and that they were planted on these lands by their Patroni, who could indeed make no use of their lands if they had not had men to put upon them.

The nobles must have had 'ager privatus' within the old limits of the

Roman territory, for if they had not land there, and the chief part of it, they could not have had property; and nobles are not nobles when they have no property. But the increase of their fortunes began with the conquests of Rome, when the Patres and their clients began to use the Ager Publicus. It is a good evidence of the use to which these lands were originally put that we find in Pliny the following (xviii. 3): "Pecunia ipsa a pecore appellabatur. Etiam nunc in tabulis Censoriis pascua dicuntur omnia ex quibus populus reditus habet, quia diu hoc solum vectigal fuit[2]." Those lands which were distant from Rome and which were not assigned, could not be profitably used except as pasture lands; and if the Patres or the nobles had the sole right to this enjoyment of the wastes, they had the opportunity of enriching themselves by their flocks and herds. It is certain at least that none except the rich could make use of these lands, whether near to Rome or remote, without possessing capital. Permission to the poor to use these wastes would have been worth as little as a tract of land in Australia or Zealand to a man who has no capital. By the term 'wastes' here is simply meant land not occupied, not in cultivation. It is well known how soon good land would become forest again, if it were left without cultivation. The pasturing of cattle on the wastes of a new country, or a country that has lost its population, which is the same thing, is a more practicable and a more profitable way of using the land than agriculture or tillage. These Roman pasture lands were not marked by any artificial limits; but there must have been some means of marking the extent of the land which a man occupied with his animals; or the whole number of animals that a given tract could bear must have been determined in some way. The original occupation of this land was probably made without order or method, as already observed. The mere fact of the use and enjoyment of land would in time be converted into the notion of holding, having, possessing, and enjoying as of right. In the reign of Servius Tullus (Livy, i. 46; Dionys. Rom. Antiq. iv. 9) a division of conquered land was made among the Plebs, but it was made against the will of the Patres, who looked upon such land in a manner as their own. The occupation of these public lands must have been regulated in some way in course of time. If the Patres could by a Decretum distribute public land among soldiers, we may assume that they could regulate the occupation of it by Possessores (Livy, 31, c. 41, 49). The Possessores who had by use got a kind of title were protected against invasion of their Possession by the interdict of the Praetor. Thus the Possession became a Right, and one that could be maintained by a Possessor against any person.

[2] This passage is referred to in Ph. Ed. Huschke's treatise, "Ueber Fest. v. Possessiones et Possessio,' Heidelberg, 1835.

When the possession of land was secured, the value of it would be increased by the erection of buildings, and by other improvements; and a man is always ready to consider his own that on which he has laboured and which he has improved. And this notion is right; for neither land nor any thing else in its natural state has any real value: all the value that it has comes from labour. The cultivation of the best part of a Possession would follow in course of time; and it would also be in the nature of things, that is, it would be consistent with love of gain, to avoid the payment of the money for the use of the public land (Liv. iv. 36; Dionys. Rom. Ant. viii. 74). For a payment was always due to the state in respect of this public land, which payment would both be a source of revenue and an evidence that the land was public (Liv. xxxi. 13). The public land which was thus possessed, was dealt with by the Possessor as if he had the ownership, and in fact he could not deal with it in any other way, for his Possession was as exclusive as if it had been ownership. He alone could use and enjoy the land which he possessed; every other person was excluded from the use and enjoyment. Therefore, except as against the state, his Possession might be defined exactly in the terms in which ownership of land is defined; and the definition of ownership is simply this, the right to the possession and enjoyment of land to the exclusion of all persons. Ownership is a right which is good against all the world; a right which the state recognizes. The possession was a right good against all the world, and so far it was recognized by the state; but the state did not recognize the Possession as a title which the state would not disturb. A Possession of Public land passed from father to son ('quasi jure hereditario,' Florus iii. 13); it was sold, it was given in marriage portions, and it was mortgaged. It is only from writers who speak of the later times of the Republic that we learn these facts, but the nature of the case shows that from the time when a man was protected in his Possession, the Public land was considered by the Possessor as a kind of property. Cicero then (De Off. ii. 22, 23) might justly say, "What equity is there in this, that after land has been possessed for many years or even many generations, a man should have it, who never had it before, and that he who has had it, should lose it?" and again: "Why so? that when I have bought, and built, when I take care of the land and lay out my money on it, you should enjoy against my will what is mine!"

Still the land was the property of the state. If a Possessor died without any next of kin, and without having made any disposition of his Possession by will, the Possessio was vacant; and we must not assume that it was left to any person to seize it, though such irregularities might happen, particularly in the early periods of the Roman conquests. But when Possession was recognized as a Right, a vacant Possession

must revert to the state, if the last Possessor left no next of kin, and had made no disposition of it by Testament. Being the property of the state it might be sold. It could also be given in limited portions (assignatus). When a Colonia was established, lands were granted to the settlers without disturbing the Possessors, if there were any; and these settlers after the legislation of Servius Tullius were citizens out of the Classes who had means enough to cultivate the land which was given them. But there were attempts made, and sometimes successfully, to assign to the citizen who had no land, portions of the Ager Publicus which was Possessed; and these attempts were resisted by the Nobilitas or Possessores. The first Lex Agraria was that of Sp. Cassius (B.C. 486), and all the Leges Agrariae after that time had for their principal object the resumption of the public land, and its distribution among those who had none. This Lex of Cassius was the beginning of that agitation (Liv. ii. 41) which continued till near the end of the Republic, for never was such a Lex proposed without being followed by great disturbances. Machiavelli, whose judgment of Roman affairs in general is more exact than that of any of the scholars who since his time have encumbered this subject with their learning, though he is sometimes incorrect in particulars, considers the disputes about these Agrarian Laws to have been the cause of the ruin of the Roman state (Discorsi, i. c. 37). It is a marvellous example of arrogance and want of sense for some modern writers to suppose that they understand the nature of the Agrariae Leges better than Livy did, or that it is possible that a Roman historian, however uncritical he may be in some respects, should have misunderstood or misstated a matter which had agitated the Roman state for centuries.

To silence the clamours of those who called for the distribution of the Public land, the Senate sometimes sent out a Colonia, for the double purpose of strengthening Rome against its enemies and satisfying the demands of the people without disturbing the Possessors (Liv. iii. 1; ii. 48). The Lex of C. Licinius (B.C. 377), "de modo agrorum ne quis plus quam quingenta jugera possideret," was intended to limit the Possessiones of every individual to this amount of land, and to reserve some of the Public land either for assignation or as a source of revenue to the state [1]. But this Lex was evaded, and up to the time of the Gracchi it

[1] Huschke in a small treatise, "Ueber eine Stelle von Varro, &c.," understands the Lex to apply to all land, whether the title to the land was ownership or Possession. Puchta (Instit.) maintains that the Lex applies only to ownership, in maintaining which he contradicts Livy, as he admits, and he contradicts also the whole tenor of Roman history. It is not the words Possessio, Possidere only, which determine the question, for these words can express ownership as well as possession; but the certainty that the Licinia Lex applied only to Public Land, which had not been assigned, is proved by other expressions and by the whole nature of the case.

does not appear that the Possessores lost much of what they had. They maintained their Possessiones, and even increased them. The state had Public land in all parts of Italy, far removed from Rome, and it was very easy for the Possessores to encroach continually and to extend their possessions. And even those who had land as owners encroached on the Public land, as we see in the case of Campania, and the commission given to L. Postumius, the consul, to ascertain the boundaries between the Ager Publicus and Privatus; for it was alleged that a great part of the Public land was occupied by private persons who had gradually extended their property by encroachments. This Publicus Ager, after the boundaries were settled, was let by the Censors (Livy 42. c. 1. 19). One of these passages in Livy is very precise and instructive: "In the same year a large part of the Campanian territory was recovered for the public use by the inquiry instituted by Postumius, the land having been occupied (possessed) by private persons indiscriminately; and M. Lucretius, tr. pl., promulgated a lex to empower the Censors to let the Campanian land (fruendum locarent). This had never been done in all the time since the conquest of Capua, and had been purposely neglected that the cupidity of private individuals might have full range in this vacant territory." A signal example of carelessness in the administration of public affairs and of dishonest dealing with the public property in order to favour the interests of private persons. The practice of encroaching on the Public land, even on land set apart for religion, continued under the empire (Frontinus, De Contr. Agr. p. 56, ed. Lach.); and Public land will always be encroached on, if the Public (Res Publica) does not look after it.

Before the time of the Gracchi a great change had taken place in the agriculture of Italy. The old peoples of Italy were settled in towns, as already observed, and each town had its small territory. In this state of society there could be no large estates, and the lands were cultivated chiefly by the owners, who were free men. This was the case also in the early and the heroic age of Rome. When estates are small, a man wants no labourers except himself and his family; a slave would be a burden rather than a benefit. But the Roman conquests changed all this. Rome ruined the prosperity and destroyed the manhood of Italy. She made a waste and a desert of this fair peninsula. Conquest gave Rome land and slaves; and large possessions required many labourers. Labour was not purchased with money, but labour was done by compulsion, by slaves who worked in chains, and who were treated like beasts. Slaves were held in great numbers both by the Romans and the inhabitants of the Municipia, for they also contrived to lay hold of vacant lands. The small cultivator could not exist under this system. He was liable to serve in the army, his land was neglected in his absence

or ill-managed by his family, and his little property was encroached on by his powerful neighbours (Appian, B. C. i. 7—9; Plutarch, Ti. Gracchus, 8, 9; Florus, iii. 13; Livy, Ep. 58; Sallust, Jug. 41). It is impossible that a body of small cultivators can ever exist by the side of men of large estates, when the large estates are cultivated by slaves. Whatever may be the disadvantages of small farms, when we consider them purely with reference to production, the possession of land in small allotments encourages marriage and the procreation of children; and the production of men to supply the consumption of her eternal wars was necessary for the existence of Rome. Such was the state of Italy when Tiberius Gracchus attempted a reform or rather a revolution which shook Rome to its foundation, and cost him and his brother their lives. For no man can with impunity touch the interests of a powerful class. If he cannot completely humble it, he will perish in the attempt. There are contests in which a man should not engage, except he has the power and the will to destroy his enemy.

Italy groaned under misery from the time that Rome began her conquests; and the Romans themselves had their share of the suffering. We read in Livy continually of the cruelty and avarice of the noble creditor; of the sufferings of the plebeian or poor debtor. As Rome was an agricultural and not a commercial community, it is difficult to understand how this state of affairs arose and continued. We know that in no country is there more debt than in those where the property in land is much subdivided, and where the people are eager to acquire the ownership of land. It is an expensive thing to hold land; it is one of the luxuries of the rich. Small owners who have little capital must often borrow, and they have no security to give except their land. If the poor wish to buy or to add to their small estate, they must borrow, and here also the land is the security. We have no evidence that the debts of the Roman plebs originated in borrowing, and it is not probable that they did; for borrowers imply lenders, and lenders are monied men, merchants, dealers in money, saving shopkeepers, a class of persons not numerous so far as we know in the early periods of Roman history. Besides this, commerce and money-making were not Patrician employments. The wealth of the Patrician, such as it was, came in some way directly from the produce of land.

A solution of this difficulty has been lately offered[4], which I accept as true in substance, but not in form. It is this:—"The constant historical connexion of agrarian laws with laws of debt, shows that we must consider the two in connexion with one another. The fact is this: that

[4] Researches into the History of the Roman Constitution, by W. Ihne, Ph. D. London, 1853.

the debts of the plebeians did not arise out of direct loans by the patricians, but from yearly ground-rents, to which as clients they were bound by their patrons." That the debts did not arise out of direct loans, is probable, perhaps certain. The expression 'yearly ground-rents' I reject as unmeaning and obscure, and unsupported by any evidence. The substance in this hypothesis, which the author presents as a fact, is probably true. The nobles got the land in large masses, and they could not make it profitable except by placing people on it either as shepherds, cattle feeders, or agriculturists. In no other way than by virtue of these Possessiones can we explain the existence of the enormous estates of the Roman nobles in Italy, and the origin of the Roman 'colonus' or tenant cultivator. These 'coloni' were in fact the representatives of the old 'clientes;' they paid a rent in money, or in kind for their land; and they often served their landlord in war (Caesar, B. C. i. 34, 56). Where the relation of landlord and tenant exists, there debt will exist also. Payments made for the use of land are uncertain, because the produce is uncertain, and the small cultivator may be ruined by a bad season, or by losses of any kind. If he is once in debt, he does not easily get out. One cannot conceive what revenue a Roman noble could have except from land; his client, or tenant (colonus) would pay either in kind or in money according to agreement.

But after many assignments of land had been made in different parts of Italy, there was also a class of small cultivators and proprietors. Such a class is always needy, and those who belong to it often get indebted by borrowing; and so we may conclude it was in ancient Italy. We also read of these poor people being expelled from their lands by their powerful neighbours (Sall. Jug. c. 41), and though the act of violence was illegal, we must not therefore affirm that it did not sometimes take place. Cicero's Oration Pro Tullio is an evidence of the violence, the petty war that was often carried on in the remote parts of Italy between men who were on terms of equality; from which we may easily collect what took place when one man was rich and his neighbour was poor.

The object of the reforms of Ti. Gracchus (B. C. 133) was to give land to the poor citizens, to restore the class of small land owners. His Coloniae were simply bodies of poor citizens to whom land was to be given to enable them to live and to procreate. The Lex of Gracchus limited the amount of a Possessio to 500 'jugera' as the Licinia had done, but it allowed also 250 'jugera' to a Possessor in respect of each son, and it indemnified the Possessor for what was taken from him. A commission of three persons, who were to be renewed yearly, was appointed to separate private property from the public land, and to resume for the State such part of the public land in any man's possession as exceeded the amount allowed by the Lex. The indemnifying of the

Possessores shows that Gracchus was honest; but he made a mistake if he thought that he could satisfy the rich by this concession. The land thus resumed and all the Ager Publicus which was let, except some parts of the Ager Publicus, were to be distributed among those who had no land, but it was charged with a payment, an annual payment, we may assume (Plut. C. Gracchus, c. 9). It was a provision of this Lex that the grantees of this public land were not allowed to sell their allotments (Appian, B. C. i. 10. 27). This provision shows clearly, as we might infer even without it, that the owners of small allotments often sold their land from necessity, and thus the large estates became still larger. But to give a poor man a piece of land and not to allow him to sell it, is only a step more absurd than the giving of land to a man who has no means of cultivating it. The Lex of Gracchus touched the Italian allies of Rome as well as the citizens, for many of the Italians had got possession of public land (Appian, B. C. i. 21. 34; Valer. Max. ix. 5. 1); and accordingly the consul Fulvius Flaccus (B.C. 125) proposed to give these Italians the Roman Civitas as an indemnification for the land that they would lose (Appian, B. C. i. 21. 34). But as only few of the Italians compared with the whole number would be Possessores, this was the same as proposing to give the Civitas to all, if a few were willing to pay for it by giving up their Possessiones. However, whether this story be true or false, it is said that the Senate rejected the proposal of Flaccus. The Senate also successfully resisted C. Gracchus in his attempts to prosecute his brother's reforms (B.C. 123). After the murder of C. Gracchus, a Lex was enacted which empowered the owner of assigned land to sell it (Appian, B. C. i. 27); and "immediately the rich bought of the poor, or on these pretexts drove them from their lands; and things became even worse for the poor, until Spurius Borius, a 'tribunus plebis,' proposed a Lex, that the (public) land should no longer be assigned, but that it should be the property of those who held it, who were to pay to the State a 'vectigal' (φόρους), the produce of which was to be for distribution. This was indeed some comfort to the poor by reason of the distribution of the produce of this 'vectigal;' but it was of no use for helping population." The encouragement of procreation should not be overlooked, when we are considering the Agrarian laws. Children may be procreated by the poorest and most miserable of mankind, but they can only be raised by those who have proper means of subsistence. We do not know what was the annual consumption of men in the Roman armies at this time; but we know that the armies were recruited with difficulty. The consumption of men in war may be so great that a sufficient supply can scarcely be got after leaving men enough to till the fields and to do other necessary work. Italy was now filled with slaves, the old Italian cultivator was disappearing,

and Rome, after ruining the population of Italy, had to recruit her armies from all parts of her empire.

The laying a 'vectigal' on the Possessiones was merely a trick to gain time. Another tribune soon brought forward a Lex by which this 'vectigal' was repealed, and so says Appian (B. C. i. 27), "the common folk was ejected in a body out of every thing; whence the State was more than ever in want both of citizens and soldiers," &c. Thus the nobility were finally victorious in this contest which had lasted for centuries; their Possessiones were safe, and they enlarged their estates until, as we are told, though it is hard to believe, there were not two thousand Roman citizens who had any property (in land?); this is what a tribune said, L. Marcius Philippus, and Cicero reports it (De Off. ii. 21).

The Agrariae Leges after this time did not touch the Possessiones of private persons; they were directed against the property of the State, which brought in a revenue from rents or payments which may be called rents. The sale of public property for the purpose of buying lands for distribution among the poor was entirely different from the old Roman colonial principle, as Cicero says (De Leg. Agr. ii. 27); and a more foolish expedient could hardly be devised for clearing a great city like Rome of its useless population, than that of planting on land people who had no means for cultivating it, and were unused to agricultural labour. It was better to feed such people at the public cost, as they did at Rome, as they do in some great cities now, or to allow them to perish by the slow but certain death which is a part of their condition. Ti. Gracchus knew that land without capital was a worthless gift, and he had proposed to supply his settlers with the necessary means out of the property which came to the Roman State by the testamentary gift of the last king of Pergamum (Plut. Ti. Gracchus. c. 14; Livy, Epit. 58).

The tribune, M. Livius Drusus (B. C. 91), proposed various Leges, one of which was to give the Civitas to the Socii and the Italians. It seems that he also proposed to dispose of, to sell, or to give all that the State had; and a saying of his is recorded that he had left nothing for any body to grant, unless he should choose to distribute the mud and the skies (Aurel. Vict. De Vir. Ill. 66). The prospect of the Civitas which the Lex of Livius presented to the Socii and the Italians, was the immediate cause of the Marsic war, for their hopes were disappointed. Livius himself was assassinated, it is not known by whom; and all his Leges were repealed.

It is impossible to understand the history of Rome unless we clearly comprehend that men was what the Roman State wanted, and not money. Its policy was not to aid or to encourage its citizens to grow rich;

its policy was to aid, to encourage them to procreate: and hence the old Roman notion was that there should be many small proprietors of land, who would do for the State the work that was wanted. A modern writer has seen and expressed this well (Dureau de la Malle, Économie Politique des Romains, Vol. ii. chap. 1):—"Le sol volcanique et meuble de la campagne de Rome est, comme celui de la Limagne, tout-à-fait propre à la petite culture avec la bêche, la pioche et la houe; il donnait par ce procédé de plus grands produits bruts et pouvait nourrir une très nombreuse population. Ce fut là d'abord le but principal du gouvernement Romain, ses guerres continuelles avec des voisins consommant annuellement une portion des citoyens aptes au service, que la fécondité des mariages, excitée par l'abondance des moyens de subsistance, pouvait seule réparer. On peut dire que le Sénat Romain, comme Napoléon au xixe siècle, avait mis la population en coupe réglée." The author remarks on the great increase of the population of Ireland under the system which was still in full activity when he wrote. It was a miserable population, it is true; but it furnished soldiers and sailors for England, and labourers for the world. It was also in some respects a better population than that of England. In England as he shows, the system of large farms gives a larger net produce than the system of small farms; and it checks population. One system produces wealth, the other produces children, which will always be produced where there are the means of feeding them, and where marriage is encouraged by the law or by religion, and where prostitution does not exist. England has its wealth and its prostitution. Ireland had its poverty, its marriage, and its children; and so it was in ancient Rome. Dureau de la Malle contrasts the Limagne d'Auvergne and the Beauce in France:—"En France, la Limagne d'Auvergne, comparée à la Beauce, peut offrir un exemple semblable. Les circonstances sont à peu près analogues à celles où se trouvent l'Irlande et l'Angleterre. Dans la Limagne tout se cultive à bras, dans la Beauce tout à la charrue; aussi dans la première, la population est de 3,500 individus, et dans la seconde de 7 à 800 par lieue carrée." The Beauce is the fine corn country north and west of Orléans. It is a country of large farms. The Limagne d'Auvergne is the fertile valley of the Allier, in which Clermont Ferrand is. The farms are not large, but the cultivation is excellent, and it is not all done by the arm. The condition of the people cannot be compared with that in Ireland in past years. They are clean, many of them, well clad, and well fed. The author's conclusion is this:—"On se fera, je pense, une idée très juste de l'état des propriétés et de la culture de l'Italie dans les six premiers siècles de Rome, au moins jusqu'en 560 à partir de sa fondation, par le tableau que nous offrent aujourd'hui l'Irlande et la Limagne. Mais l'Angleterre cherche à borner, Rome

dans les six premiers siècles tendait à étendre l'accroissement de sa population, et le nombre des esclaves était si faible dans les cinq premiers siècles, que cet élément particulier à Rome ne peut pas changer beaucoup les rapports de la comparaison."

The Marsic or Social war (B.C. 91—89) between Rome and the dependent states devastated Italy, which lost the flower of her manhood in this bloody contest. The losses of war are soon repaired in a fertile country, but before Italy had time to recover from the Marsic war, the civil war broke out between the factions of Marius and Sulla. This war was conducted with barbarian ferocity, the population of whole towns was slaughtered, the property of numerous proscribed persons was confiscated, and even some towns lost their lands, or were loaded with heavy charges. In many of the Italian towns Sulla quartered his soldiers, and gave them the lands and houses of the people (Appian, B. C. i. 96). Thus the ruin of Italy was completed. It was full of towns and people when Rome began her conquering career. Sulla left it a desert, deprived of its free agricultural population, and in the possession of brutal soldiers, too lazy and too ignorant to cultivate the land. Whatever was done on the land, was done by slaves. Sulla's policy was to secure the quiet of Italy by placing soldiers in every town, which is precisely the way in which modern tyranny attempts to secure itself in the continental states of Europe. After all Sulla's grants to his men, there was still land left, there was more than enough; a terrible proof of the loss of human life and of the miseries that Italy had suffered (De Leg. Agr. iii. 3). These lands were laid hold of by any body who chose to take them, for what was land worth when property and life were insecure and people had lost all their means? "The sale of the Sortes assignatae was also forbidden by Sulla, but the prohibition had no effect; the Veterans, most of them without families, and without a taste for regular agricultural occupation, soon left vacant by their death or by sale in their life-time, the lands which had been assigned to them; twenty years after the settlement of these soldiers, great estates (latifundia) were already formed out of the land allotments, on which the Possessores Sullani encroached with the more impunity, as Sulla does not appear to have strictly maintained his own rules against the rich and noble, who formed his own party. The result of the assignments of Sulla then was, that the lands assigned to the soldiers were soon lost, while the owners who had been driven out of them, and took refuge in Rome, increased the Roman proletariat enormously, and formed that dangerous body of people without property, ready for the most desperate undertakings, on whom the conspiracy of Catiline relied for support" (Marquardt, Handbuch, &c., iii. 1. p. 330). Sulla, as we might

suppose, gave no indemnity to any of the persons who were turned out of their land.

In the year B.C. 63, the tr. pl. Rullus with his Lex Servilia attempted to clear Rome of the mass of pauper citizens, as he said, by settling them on land (De Leg. Agr. ii. 26); to free the city from a population which was dangerous to its tranquillity. Rullus proposed to confirm the title to all land that had been sold, assigned, or possessed since the consulship of Marius and Carbo (B.C. 82; De Leg. Agr. iii. 2). There was little public land now left in Italy, but Rullus proposed to distribute what still remained, the Ager Campanus and the Campus Stellatis. He also proposed to sell the public property in Italy, which was not adapted for distribution, such as the Silva Scantia, and all the property of the State which was beyond the limits of Italy (De Leg. Agr. ii. 15). He also proposed to apply the revenues derived from the new conquests of Pompeius in the east to the objects of his Lex, which were an indemnification to those who had been deprived of their property by Sulla, and the purchase of lands in Italy on which the poor of Rome were to be settled. The Lex was not carried owing to the opposition of Cicero and the nobility; and the poor remained in Rome.

But Caesar did part of that which Rullus could not do. In his consulship (B. C. 59) he carried two Leges Agrariae. It is inferred, and perhaps correctly, from a passage in Dion. (xxxviii. 1), that the titles of all Possessores were confirmed; but an attempt was again made to maintain the small estates by prohibiting their alienation for twenty years, a restriction which was removed after Caesar's death by M. Brutus and C. Cassius (Appian, B. C. iii. 2). The Ager Campanus and the Campus Stellatis, which Rullus had proposed to sell, were distributed under one of Caesar's 'leges' among soldiers and citizens. Twenty thousand men, who had three children or more, were selected from the mass of poor, and each had an allotment (Appian, B. C. ii. 11). Rudorff says that Caesar indemnified the people who were turned out either with lands or money; and he quotes Suetonius (Caesar, 38): "assignavit et agros, sed non continuos, ne quis possessorum expelleretur;" but this passage has no reference to the lands of Campania. Rudorff also refers to Appian, (B. C. ii. 94,) a passage which has nothing to do with the matter.

The condition of the cities in the Roman Provinces has been briefly explained in another place (Vol. I. Verr. ii. 6, and the notes). There were Civitates Foederatae, and Civitates Liberae et Immunes. The Foederatae had their condition fixed by a Foedus or treaty. The Liberae, when they were also Immunes, paid no taxes to Rome; their land was free.

The condition of the Foederatae Civitates, so far as we know, was as good as that of the Liberae et Immunes. The second class of cities or states was composed of those which had been reduced to subjection by force of arms, and of the royal domains of conquered countries, such as the domains in Sicily, Bithynia, and Macedonia. These lands were Ager Publicus. The lands of this second class were treated as the property of the Roman people. All the rest of the land not included in the first two classes was in the hands of Provinciales.

The Ager Publicus in the Provinces consisted of arable land, pasture land, mines, and salt pans ('salinae'). When the Romans had acquired large foreign possessions, careful surveys were necessary, and thus the office of Finitores or Agrimensores arose. Their system was perfected under the Empire. The survey and measurement of the Corinthian Ager Publicus are mentioned in the Lex Thoria; the Finitores in the orations against Rullus. Public land must have been surveyed when it was sold in allotments. The allotments varied in size. One authority speaks of allotments of fifty Jugera (Siculus Flaccus, de Condic. Agrorum, p. 152, ed. Lachmann). These Jugera were square blocks of land, or rectangular. A payment in the form of tenths was reserved from all these lands, and the farming of these Decumae was let by the Censors at Rome. This land was Ager privatus vectigalisque, a term which we find in the Lex Thoria (line 49: 'isque ager locus privatus vectigalisque'). But it is only called Privatus to show that the enjoyment was appropriated, for the ownership was still Publicus. The land was the property of the Roman state. The ownership of provincial land was not complete ownership. The Roman state was the owner, a title derived from conquest, and on which was founded the reservation of the tenths, for land which was completely Roman private property paid no dues. Hence the doctrine in Gaius, which is true, that the Roman state was the real owner of provincial land (Gaius, ii. 7. 26, 27. 46; Agennius Urbicus, pp. 46, 47, ap. Goes.).

That which the state still held simply as Ager Publicus, was also let; and generally on long leases, or even on perpetual leases, the origin of the Emphyteusis (Hyginus, De Condic. Agr. ed. Lachmann; Gaius, iii. 145). So long as the rents or dues were paid, the enjoyment of the land was secured ('Vectigales vocantur, qui in perpetuum locantur, id est hac lege, ut quamdiu pro his vectigal pendatur, tamdiu neque ipsis qui conduxerunt neque his qui in locum eorum successerunt auferri eos liceat:' Paulus, Dig. 6. 3. 1). When the territory of Capua was declared Public land, the whole of it was let for a corn payment (Livy, 27. c. 3): this was part of the land which the Lex Agraria of Rullus proposed to sell. The houses in the town also were let (simul ut cum agro tecta urbis fruenda locarentur); which shows that this was a letting in the

common use of the term, and that to let the Public land is to grant a lease of the land for a rent.

The lessees of the Public land in the provinces were Romans who cultivated the land (De Leg. Agr. ii. 31; Livy, 27. c. 3; 42. c. 19) themselves, or in the remote provinces let it out again in smaller portions to others; or the lessees were Provinciales, frequently the former owners, who got back their land, but subject to a yearly payment and to the legal ownership of the Roman state. As already observed, it is an error to suppose that the land itself of which we have spoken was not let, but only the tenths. It is plain from the ancient authorities that the letting was a lease of the land. The 'Aratores agri publici' were the lessees of the Publicus ager: the other Aratores were cultivators of their own land, subject to the payment of 'decumae' and to the legal ownership of the Roman state. When the 'aratores agri publici' had long enjoyed their land and had improved it, they would think it as great a hardship to be deprived of it, as a man would if he were deprived of the land of which he called himself owner (Cicero, De Leg. Agr. ii. 21: "Qui agrum Recentoricum," &c.).

There is a note in Marquardt's continuation of Becker, which I shall transcribe, as there are different opinions about these 'aratores agri publici,' and I am not yet quite sure whether the explanation given in the notes (Vol. I. Verr. ii. 3. c. 6) or that which is here transcribed is the true explanation.

"The condition of the 'aratores agri publici' in Sicily has hitherto been insufficiently explained. The principal passage is in Cicero (Verr. ii. 3. c. 6): "Perpaucae Siciliae civitates sunt," &c. The usual explanation of this passage by Zumpt and Walter, according to which the matter of this censorian letting was not the land itself, for this was restored ('redditus'), but only the payments reserved to the state from the land, is just as false as the conclusion thence derived by Zumpt, that all the towns, which Cicero does not mention among those which were ill-treated by Verres, are to be considered Censoriae, which had nothing to do with the administration of the governor in respect to the 'decumae' or payments to the Roman state. The Ager Leontinus, which had suffered much from Verres, was 'Ager publicus populi Romani,' as Cicero says several times (Cicero, Phil. ii. 17 and 39; iii. 9). Even if it was originally 'redditus,' as we might infer that it was from the first passage cited above from the Verrine orations, this condition was entirely changed in Verres' time. At that period no Leontiner possessed any landed property in that territory, with the exception of one family (Verr. ii. 3. c. 46): the whole territory was let to eighty-four 'aratores' (3. c. 51), part of whom were Sicilians from Centuripae, and part were Romans (3. c. 18. 24. 41). The lease was perpetual, or

the right passed to the 'heredes' (3. c. 41). The Decumae agri Leontini were not let in Rome, but in Sicily, to Sicilian Decumani according to the Lex Hieronica (3. c. 46). Consequently there can be no doubt that the words 'is ager a censoribus locari solet' (Verr. ii. 3. c. 6) are to be understood of the letting of the land itself, which letting was renewed at every 'lustrum' in the case of land that had become vacant, and the same thing was done in Sicily which we have proved to have been done in the matter of the Ager Campanus. Further, all this explains how the Ager Leontinus, if it was originally given back to the Leontini without sale, and there could be no sale in the case of Ager Publicus, gradually passed into other hands."

The pasture lands in the provinces, which were the hills and other places not fit for agricultural purposes, were let to the Publicani by the Censores at Rome. The persons who wished to feed their animals on these lands applied to the Publicani, who registered the animals and received a certain sum (scriptura) for each animal (Varro, R. R. ii. 1. 16: "neque eadem loca aestiva et hiberna idonea omnibus ad pascendum. Itaque greges ovium longè abiguntur ex Appulia in Samnium aestivatum atque ad publicanum profitentur, ne si inscriptum pecus paverint lege censoria committant"). This practice existed in the kingdom of Naples when Swinburne wrote (Travels in the Two Sicilies in the years 1777—1780). The custom house for the toll on sheep that passed to and from Puglia was at Foggia, in the centre of the plains of Puglia. This custom house, he says, "has the distribution of a fixed assessment upon all sheep that descend in autumn from the mountains of Abruzzo into the warm plains of Puglia where they yean and in May return to the high country" (Travels, Vol. i. p. 140). Swinburne's account of the regulations of Alfonso the First about these customs and the sheep is very instructive. Among other things the king agreed with the graziers and sheep-masters of Abruzzo and the landowners of Puglia to make a "convenient road called the Tratturo, sixty paces wide, for the passing and repassing of the flocks." This is one of the Roman Calles, which Cicero speaks of in the Oration Pro Cluentio, c. 59.

The mines of the Provinciae comprehended mines of metals of all kinds, stone quarries, and salt pans. Gold, silver, lead, and copper mines were worked. Tin came in the way of commerce only; and it came from Britain (Diod. v. 22) long before the Romans invaded this island. It came through France to the coast of the Mediterranean. There were valuable mines in Spain (Strabo, p. 148), and in Macedonia. These mines were let to the Publicani. The salt pans (salinae) were also let. When Paullus Aemilius was organizing the province of Macedonia after his conquest, he forbade the importation of salt, from which

we must conclude that there were salt pans in Macedonia, which the Roman state seized, and compelled the Macedonians to buy this salt only (Livy, 45. c. 29). Just in the same way the English deal with salt in India (Vol. I. Verr. ii. 5. c. 18, note). The object with the Romans was the same as with the English, to get money out of the people by making them pay dearer for salt by forbidding the importation; an example of injustice and greediness more culpable in the English than in the Romans. The mines in the provinces were sometimes sold to individuals; and when they were not sold, money-making men contrived by buying many slaves and getting them employed in the mines to make large fortunes (Diodorus, v. 36; Plutarch, Crassus, c. 2).

The provincial land which was not included in the Roman domain remained in the possession of the occupiers. They had the use and enjoyment (ususfructus), but the theory was that the ownership was in the Roman State (Gaius, ii. 7). Provincial land owed a payment to the Roman State as an evidence that what was left to the conquered people came from the grace and mercy of the conquerors. It was a Roman fashion to make people pay for the cost of being beaten, and hence after the close of a war they imposed money contributions on the conquered, which were called 'stipendium,' because the money was applied to the payment of the Roman troops. Heavy contributions were levied on the conquered nations out of Italy, and it became a fashion to make these payments permanent, the first example of which was in Illyricum (Polyb. ii. 12). The Romans always required these payments, as Pliny says, to be made in silver, and not in gold. Accordingly when the Romans began to form Provinces out of Italy, they imposed on the people a money payment (stipendium), besides the obligation to supply the army with necessaries. These Provinces were called Stipendiariae, and these Provinciales were called Stipendarii. When the Romans organized a Provincia, which paid a Stipendium, they provided for the money being raised by dividing the country into districts and establishing a rating of property like that in the Roman census. What the Romans received as 'stipendium' was contributed by the Provinciales under the name of 'tributum.' The notices of the census in the Provinces during the Republican period of Rome are scanty, but the establishment of the census in the provinces is certain; and indeed the existence of a Stipendium, which was raised by a tax on property, implies a rating or census. Besides this, in some cases, as in Africa, the Stipendium was raised both by a tax on property and by a poll tax, which also implies a census. The Stipendium was collected in the several districts by the magistrates or authorities of each district, who were responsible for the payment of the sum levied on each district. The amount of this tax on property

varied in different countries, and the total amount would depend on the rating. In some cases it was one per cent. on the value.

Sicily and Asia were not Stipendiariae (Cicero, Verr. ii. 3. c. 6; the notes). They paid 'vectigalia' (τέλη), and not 'stipendium' (φόρος). The 'decuma,' or tenth, was the chief 'vectigal' (Vol. I. Verr. ii. 3. c. 6, notes; Excursus on Asia).

The passage of Cicero (Verr. ii. 3. c. 6) might, from its general terms, lead us to infer that where Stipendium was paid, there was no Decuma, and that where the Decuma was paid, there was no Stipendium. But Sardinia, which was Stipendiaria, was compelled to contribute corn also on some occasions (Livy, 23. c. 21. 41; 26. c. 2). If there was Ager Publicus in a Stipendiaria Provincia, this land also paid a Decuma, which was the case in the Province of Africa. The Civitates Immunes, which were free from regular taxes, were required to make extraordinary contributions; which was the case with Messana, a Civitas Foederata of Sicily (Cicero, Verr. ii. 4. c. 9). The Provinciae Stipendiariae also were sometimes required to deliver corn in place of part of the 'stipendium;' and this was common under the empire (Hyginus, de limit. const. p. 205, ed. Lachm.: "in quibusdam provinciis fructus partem praestant certam, alii quintas, alii septimas, alii pecuniam et hoc per soli aestimationem"). Sometimes skins and hides for the use of the army were required. To secure a supply of food in the provinces for the troops, public storehouses (horrea) were established, the existence of which is proved both by inscriptions, the names in the Itineraries, and passages in the ancient writers.

The indirect taxes were the tolls (portoria, Vol. I. Verr. ii. 2. c. 70) on goods exported and imported, and goods carried inland, and by canals and rivers. These tolls, though abolished in Italy in B.C. 60, after the date of Cicero's orations against Rullus, were still raised in the Provinces for the benefit of the Roman State, that is, they were farmed by the Publicani. The 'portoria' in the Civitates foederatae, and the Immunes, belonged to these municipalities.

We now see what a wide field the law of Rullus had to work upon. The substance of his Lex is explained in the following terms by a recent writer (Dureau de la Malle, Économie Politique des Romains, ii. 323): "Immediately after Cicero entered on his consulship, the tribune Servilius Rullus proposed a new agrarian law, which, under the pretext of relieving the poor, delivered up to certain citizens all the domains, all the revenues of the Republic, and conferred on the Decemviri who were charged with its execution an exorbitant power. The following are the principal heads: this law authorized the sale of the ancient domains of the kings of Macedonia and of Pergamum; those of Mithridates in

Paphlagonia, in Pontus, and in Cappadocia; the kingdom of Bithynia, even that of Egypt; the territories of Corinth, of Carthago Nova, and of old Carthage (i. 2; ii. 19), and of Cyrene; and besides this, the lands, roads, edifices, the moveable and immoveable property which belonged to the State beyond the limits of Italy (ii. 14, 15). This law also authorized the sale of all that the State possessed in Sicily, in houses and landed property, estates, vineyards, forests, meadows, the property on which buildings had been erected which formed the domain in Italy, such as the Scantia Silva, the territories of Capua and Stellata, the public road from Herculanum (to Naples), Mount Gaurus, the osier beds of Minturnae, and even at Rome the temples, the public places, &c.

"The same Lex required the generals to bring in all the booty and all the money which they had taken or received in war, and which had not entered into the public treasury, or had not been employed on some public building. It gave up to the Decemviri all the slaves, cattle, gold, ivory, cloth, moveables, &c., which had been acquired for the State since the consulship of Sulla and Pompeius; to direct all these operations it appointed ten commissioners elected by seventeen tribes only, which tribes were to be chosen by lot out of the five and thirty. It conferred on these Decemviri every power for selling, alienating, imposing charges, letting to farm, calling people to account, determining what lands belonged to the state or to individuals, and this without appeal for five years. It also placed in their hands, with the power of sale, the domains and the taxes which the State might acquire from the time of the promulgation of the law.

"With the immense sums acquired by these various means, the 'decemviri' were to buy lands in Italy and to settle poor citizens on them. They had contrived to get power given them to found new colonies and restore old colonies, to determine at their pleasure the situation of the colonies, the fortifications, the settlers (coloni).

"Finally, they were to distribute among five thousand Roman citizens the territory and the city of Capua, which formed one of the finest and the surest of the revenues of the State."

Cicero said that the law established ten kings, ten men with absolute power. He entered on the office of consul on the first of January, B.C. 63, and on the same day he declared himself in the Senate (i. 8.) an opponent of the Lex of Rullus. He had now attained the consulship, the great object of his ambition, and in this speech, which may be taken as an indication of the policy of his administration, he shows that he is now one of the conservative class, as we may call it, a partisan of the Optimates, an enemy to those who would disturb the State by their real or pretended popular changes.

The second and third orations were delivered before the people. After the second oration Rullus addressed the people in the absence of Cicero, who replies to him in the third oration.

These orations are very instructive. I might have made the notes more complete, but as notes are only wanted to explain the text, the commentator must keep to his business and not bury the author under rubbish, that he may have the satisfaction of seeing how large a pile he can heap up. Perhaps I may be thought to have done a little of this work here and there; while I was supposing that I could give the student a few ideas on Roman history. So barren, disgusting, and tedious has Roman history become in the way in which it has been handled, so fruitless in all instruction, so bewildered and so bewildering with conjectures, theories, and learning, as it is called, that one despairs of any good being got out of it, till people can learn to be more modest, to believe that an ancient historian had some sense and some knowledge of what he was writing about, and that more is to be learned from Roman history, as it is told to us, undoubtedly often far from the truth, than by the refined and subtle, but often most absurd, doubts and speculations of modern writers.

I have compared the text with the text of the edition of the three orations against Rullus in J. G. Baiter's edition, which forms a part of the second edition of Orelli's Cicero. The abbreviations which he uses are the following:—

E = Cod. Erfurtensis, nunc Berolinensis, apud Wunderum.

F = Cod. Erlangensis, 38. (20.) in fol. chart. sec. xv. foliis 294 constans, ex eodem fonte e quo Gruteri Palatinus Secundus. Excussit Car. Halmius.

P = Lectiones Codicis a P. Pithoeo margini ed. Lamb. 1581 adscriptae. Exscripsit Car. Halmius.

T = Lectiones ad marginem exempli Aldini 1554 a Torrentio Levino nescio unde enotatae.

G = Cod. Francianus primus Graevii, docte passim interpolatus.

A = Editio Ascensiana prima, a. 1511.

M. TULLII CICERONIS

DE

LEGE AGRARIA

CONTRA

P. SERVILIUM RULLUM, TR. PL.

LIBRI TRES.

ORATIO PRIMA,

IN SENATU, KALENDIS JANUARIIS.

Desunt permulta.

FRAGMENTA.

1. Praedam, manubias, sectionem, castra denique Cn. Pompeii sedente imperatore decemviri vendent. (Gellius, xiii. 24.)

2. Imberba juventute. (Charis. 1. 74. ed. Putsch.)

3. Veniet igitur sub praecone tota Propontis atque Hellespontus: addicetur communis ora Lyciorum atque Cilicum: Mysia et Phrygia eidem conditioni legique parebunt. (Aquila, c. 43, p. 187. ed. Ruhnk.)

I. Quae res aperte petebatur, ea nunc occulte cuniculis oppugnatur. Dicent enim decemviri, id quod et dicitur a multis et

Veniet] 'Venibit:' Baiter.—'communis:' it is not certain what this means. Baiter would prefer 'omnis,' which is the best of all the proposed emendations.

1. *cuniculis*] See Pro Caecina, c. 30.—'post eosdem consules:' these consuls are L. Sulla and Q. Pompeius, from the time of whose consulship (B.C. 88) the law of Rullus was to have effect. It is assumed that they were mentioned in the part of the oration which is lost. This Egyptian king Alexander is again mentioned by Cicero (De Leg. Agr. ii. 16), where he says that it was said that this Alexander had left to the Romans his kingdom of Egypt. Cicero affirms that the Romans sent to Tyre after the death of Alexander to take possession of the money which he had deposited there; and he says the same in the Fragm. de rege Alexandrino, where he calls this king Alexas. The name is Alexandri here (E. F. G. P.); but in the next oration (ii. 16) it is 'regis Alexae' (E. F. P.). We must conclude that there was an Egyptian king or a pretender of this name, a third Alexander, who died about B.C. 65 (L. Cotta, L. Torquato consulibus). Trogus (Prolog. Lib. 39) mentions a son of Alexander who succeeded Lathyrus, and adds that on his expulsion Ptolemaeus Nothus (Auletes) was put in his

saepe dictum est, post eosdem consules regis Alexandri testamento regnum illud populi Romani esse factum. Dabitis igitur Alexandriam clam petentibus iis quibus apertissime pugnantibus restitistis? Haec, per deos immortales, utrum esse vobis consilia siccorum an vinolentorum somnia, et utrum cogitata sapientium an optata furiosorum videntur? Videte nunc proximo capite ut impurus heluo turbet rem publicam, ut a majoribus nostris possessiones relictas disperdat et dissipet; ut sit non minus in populi Romani patrimonio nepos quam in suo. Proscribit in sua lege vectigalia quae decemviri vendant, hoc est, proscribit auctionem publicorum bonorum. Agros emi vult qui dividantur: quaerit pecuniam. Videlicet excogitabit aliquid atque afferet. Nam superioribus capitibus dignitas populi Romani violabatur: nomen imperii in commune odium orbis terrae vocabatur: urbes pacatae, agri sociorum, regum status decemviris donabantur: nunc praesens, certa, pecunia [numerata] quaeritur. Exspecto quid tribunus plebis vigilans et acutus excogitet. Veneat, inquit, silva Scantia. Utrum tandem hanc silvam in relictis possessionibus an in cen-

place. Clinton observes that "Ptolemy Auletes was an illegitimate son of Lathyrus (De Leg. Agr. ii. 16). He was not acknowledged by the Romans till B.C. 59. The king, therefore, whom Caesar wished to restore during his aedileship (Sueton. Caesar, c. 11) in B.C. 65, and who had been already acknowledged the ally of Rome, must have been his competitor Alexander III., as Graevius has supposed." Clinton adds "It must be remarked, however, that this very year in which Caesar was aedile was the year of Alexander's death; the consulship of Cotta and Torquatus, in which year ambassadors went to Tyre to bring away his treasure." It is still possible that all these events may belong to one year. This Alexander is not Alexander II., as some affirm, for Alexander II., whom Sulla restored (B.C. 81) was murdered on the nineteenth day after his accession to the throne. (Appian, B. C. i. 102.) It is plain that the historians speak of a king Alexas or Alexander who was not Alexander II. We cannot certainly conclude that Trogus, who speaks of the expulsion of a son of Alexander, means Alexander II., and so contradicts Appian and Cicero, who say that he was murdered. We may fairly understand him to mean a king who was expelled; and that he intended to say nothing or knew nothing of the Alexander who reigned nineteen days.

Proscribit in sua lege] E. A. have 'perscribit,' and Baiter: and in the next line E. F. A. have 'perscribit,' which Naugerius altered to 'proscribit.'—Wunder objects to 'numerata;' in E. it is written above the line.—'Videlicet excogitabit:' Cicero has just said: "he is looking out for money." He adds: "he will surely devise some plan; he will produce something." After all his scheme is simply a sale, 'veneat silva Scantia.' This 'silva Scantia' is said by some critics to be in Campania, and they refer to the passage in the Brutus, c. 22: but the common reading there is now 'silva Sila.' I do not know what are the MSS. readings in that passage. The 'silva Sila' is in the Brutii. 'Aquae Scantiae' are mentioned by Pliny (H. N. ii. c. 107), but he says nothing of their position. The 'silva Scantia' is mentioned again (De Leg. Agr. iii. 4). It seems to have been in Campania.

in relictis possessionibus] This expression is not the same as "a majoribus nostris possessiones relictas," which occurs a little above. Cicero asks whether Rullus found the Scantia among the 'relictae possessiones,' or in the censors' pasture registers? He found it in the censors' registers, and we conclude that the tolls got for the pasturing of animals were worth something. 'Loca relicta' are portions of land which were not marked by 'limites' nor measured. Some of them lay beyond the 'limites,' and were bounded only by the extreme natural

sorum pascuis invenisti? Si quid est quod indagaris, inveneris, ex tenebris erueris, quamquam iniquum est, consume sane, quoniam commodum est, quoniam quidem tu attulisti. Silvam vero tu Scantiam vendas nobis consulibus atque hoc senatu? tu ullum vectigal attingas? tu populo Romano subsidia belli, tu ornamenta pacis eripias? Tum vero hoc me inertiorem consulem judicabo quam illos fortissimos viros, qui apud majores nostros fuerunt, quod, quae vectigalia illis consulibus populo Romano parta sunt, ea me consule ne retineri quidem potuisse judicabuntur. II. Vendit Italiae possessiones ex ordine omnes. Sane est in eo diligens; nullam enim praetermittit. Persequitur in tabulis censoriis totam Siciliam: nullum aedificium, nullos agros relinquit. Audistis auctionem populi Romani proscriptam a tribuno plebis, constitutam in mensem Januarium; et, credo, non dubitatis quin idcirco haec aerarii caussa non vendiderint ii, qui armis et virtute pepererunt, ut esset quod nos largitionis caussa venderemus.

Videte nunc quoad fecerit iter apertius quam antea. Nam superiore parte legis quemadmodum Pompeium oppugnarent a me indicati sunt; nunc jam se ipsi indicabunt. Jubent venire agros Attalensium atque Olympenorum. Hos populo Romano Servilii fortissimi viri victoria adjunxit. Deinde agros in Macedonia regios, qui partim T. Flaminini, partim L. Paulli qui Persen vicit, virtute

boundaries of the Territorium, which might happen when the extreme natural limit was the ridge of a mountain, when 'limitatio' was not possible, or when there was more arable land than was wanted for the time, and the 'limitatio' was not carried to the natural limits of the Territorium. Some of the 'relicta loca' lay within the 'limitatus ager,' and were left unsurveyed because of their being of little value. "Relicta autem loca sunt quae sive locorum iniquitate sive arbitrio conditoris [relicta] limites non acceperunt." (Frontinus, p. 20, ed. Lachm.) Virgil's old man had a bit of such land (Georgic. iv. 127):—

"———— cui pauca relicti
Jugera ruris erant, nec fertilis illa juvencis,
Nec pecori opportuna seges, nec commoda Baccho."

Cicero says 'in relictis possessionibus;' he means 'possessiones populi Romani.'

quoniam commodum est,] The critics are not content with this reading. Baiter, following Orelli, has 'quod commodum est;' and others have other things not worth mentioning. (See c. 3.)

2. *Italiae possessiones*] The public property in Italy.—'totam Siciliam:' he looks in the censors' registers for the public lands in Sicily. It seems hardly necessary to explain that Cicero does not mean that all Sicily was public land, for if it was, there would have been no occasion to examine the censors' books. He means all the land all over Sicily which was public, or as he expresses it in another place (De Leg. Agr. ii. 18), "quod—majores nostri proprium nobis reliquerunt."

quoad fecerit] E. A.; 'quo affecerit,' F.; 'ut fecerit,' G. Baiter has 'quod affectent,' which is an emendation of Ussing, as I suppose. Klotz writes 'quo adfectent iter,' following the indications of the MSS.; and he proves that it is Latin, which nobody will deny. See Pro Sex. Rosc. c. 48. P. Manutius led the way by reading 'quo affectarint.'

Attalensium] He means Attalia in Pamphylia and the neighbouring town of Olympus. Compare Verr. ii. 1. c. 21. Attalia was on the site of the modern Adalia, now the largest town on the south coast of Asia Minor.

parti sunt: deinde agrum optimum et fructuosissimum Corinthium, qui L. Mummii imperio ac felicitate ad vectigalia populi Romani adjunctus est; post autem agros in Hispania apud Karthaginem novam duorum Scipionum eximia virtute possessos; tum vero ipsam veterem Karthaginem vendunt, quam P. Africanus nudatam tectis ac moenibus, sive ad notandam Karthaginiensium calamitatem sive ad testificandam nostram victoriam sive ad oblatam aliquam religionem, ad aeternam hominum memoriam consecravit. His insignibus atque infulis imperii venditis, quibus ornatam vobis majores vestri rem publicam tradiderunt, jubent eos agros venire quos rex Mithridates in Paphlagonia, Ponto Cappadociaque possederit. Num obscure videntur prope hasta praeconis insectari Cn. Pompeii exercitum qui venire jubeant eos ipsos agros, in quibus ille etiam nunc bellum gerat atque versetur?

III. Hoc vero cujusmodi est, quod ejus auctionis quam constituunt locum sibi nullum definiunt? Nam decemviris quibus in locis ipsis videatur vendendi potestas lege permittitur. Censoribus vectigalia locare nisi in conspectu populi Romani non licet: his vendere vel in ultimis terris licebit? At hoc etiam nequissimi homines consumptis patrimoniis faciunt, ut in atriis auctionariis potius quam in triviis aut in compitis auctionentur. Hic permittit sua lege decemviris ut in quibus commodum sit tenebris, ut in qua velint solitudine, bona populi Romani possint divendere. Jam illa omnibus in provinciis, regnis, liberis populis quam acerba, quam

duorum Scipionum] The brothers Cn. and P. Scipiones, who carried on the war in Spain against the Carthaginians, and perished there. (Livy 25. c. 34. 36.)

ad oblatam] Baiter, who has 'ob oblatam,' says in his notes "*ob* nescio quis ap. Orellium." But are we to spoil the text at the bidding of a 'nescio quis?' 'Ad' is plain enough. He means "upon sign or token presented to him by supernatural means." When the younger Africanus took Carthage and pulled it down, he consecrated the ground on which it stood to be a pasture for sheep; and yet C. Gracchus fixed on it for the site of a colony (Appian, B. C. i. 24). Cicero calls all these 'possessiones' of the state by the name of "insignia atque infulae imperii," which is not a very appropriate kind of expression. He had perhaps Carthage principally in his mind, as he has spoken of it last, and the word 'infulae' was suggested by the word 'consecravit,' for the 'infula' had a religious import.

hasta praeconis] Cicero represents the crier and the spear, the sign of an auction, as pursuing Pompeius' army for the purpose of selling what he acquired as soon as he acquired it. 'Sub hasta vendere' is to sell by auction, and in Italy they still say 'vendere all' asta pubblica,' and 'alla subasta.'

3. *vectigalia locare*] This is the proper term for letting, though the word 'vendere' was sometimes used in the same way (Vol. I. Verr. ii. 3. c. 6). But here Cicero clearly expresses the opposition of letting (locare) 'vectigalia,' and selling (vendere) 'vectigalia,' which means selling that which produced the 'vectigalia.'

atriis auctionariis] See Pro P. Quinctio, c. 3.—'in quibus commodum sit:' the relative position of 'qui' and 'commodum' is just like that of 'qui' and 'volo.' Cicero often uses 'commodum' in this sense, "just when it suits them." See Vol. i. Verr. ii. 5. c. 6; Pro Tullio, § 17; Pro Cluentio, c. 35.

formidolosa, quam quaestuosa concursatio decemviralis futura sit non videtis? Hereditatum obeundarum caussa, quibus vos legationes dedistis, qui et privati et privatum ad negotium exierunt, non maximis opibus neque summa auctoritate praediti, tamen auditis profecto quam graves eorum adventus sociis vestris esse soleant. Quamobrem quid putatis impendere hac lege omnibus gentibus terroris et mali, quum immittantur in orbem terrarum decemviri summo cum imperio, summa cum avaritia infinitaque rerum omnium cupiditate? quorum quum adventus graves, quum fasces formidolosi, tum vero judicium ac potestas erit non ferenda. Licebit enim quod videbitur publicum judicare; quod judicarint, vendere. Etiam illud, quod homines sancti non facient, ut pecuniam accipiant ne vendant, tamen id iis ipsum per legem licebit. Hinc vos quas spoliationes, quas pactiones, quam denique in omnibus locis nundinationem juris ac fortunarum fore putatis? Etenim quod superiore parte legis praefinitum fuit, Sulla et Pompeio consulibus, id rursus liberum infinitumque fecerunt. IV. Jubet enim eosdem decemviros omnibus agris publicis pergrande vectigal imponere, ut iidem possint et liberare agros quos commodum sit, et quos ipsis libeat publicare. Quo in judicio perspici non potest, utrum severitas acerbior an benignitas quaestuosior sit futura.

Sunt tamen in tota lege exceptiones duae, non tam iniquae quam suspiciosae. Excipit enim in vectigali imponendo agrum Recentoricum Siciliensem, in vendendis agris eos agros de quibus cautum sit foedere. Hi sunt in Africa, qui ab Hiempsale possidentur. Hic quaero, si Hiempsali satis est cautum foedere, et Recentoricus ager privatus est, quid attinuerit excipi? Sin et foedus illud habet

concursatio] This word means 'business,' 'activity,' 'moving hither and thither,' and so on. See Vol. I. Verr. ii. 5. c. 31, note on 'concursare.'

legationes] He means the 'legationes liberae' or nominal commissions, which the Senators could obtain from the Senate when they wished to visit the provinces, either for business or pleasure. The title of 'legatus' protected the Senator, and the provincial 'magistratus' could give him 'lictors' to attend him. He could also claim many things for his use from the provinciales. (Cicero, Ad Div. xii. 21.) These 'legationes' were abused, until a Lex Julia of C. Julius Caesar corrected the abuse a little.—'adventus:' See Vol. I. Verr. ii. 1. c. 19.—'pactiones:' bargainings, between Decemviri and people, the people wishing to save themselves on any terms.

4. *agris publicis*] We only know the terms of the Lex from Cicero. When he says that it empowered the Decemviri to impose a very high 'vectigal' on the public lands, he must mean a 'vectigal' higher than the occupiers had hitherto paid; it would be a means of increasing the revenue. But they were also empowered to declare lands free from the 'vectigal.' If they had the power of declaring what was public land, of raising the amount paid by the occupiers, and on the other hand, if they had the power of freeing land from the obligation of payment, their powers were indeed most unlimited and most dangerous. As to Hiempsal and the Ager Recentoricus, see De Leg. Agr. ii. 21.

aliquam dubitationem, et ager Recentoricus dicitur nonnumquam esse publicus, quem putet existimaturum duas caussas in orbe terrarum repertas quibus gratis parceret? Num quisnam tandem abstrusus usquam nummus videtur quem non architecti hujusce legis olfecerint? Provincias, civitates liberas, socios, amicos, reges denique exhauriunt; admovent manus vectigalibus populi Romani. Non est satis. Audite, audite vos, qui amplissimo populi senatusque judicio exercitus habuistis et bella gessistis: quod ad quemque pervenerit ex praeda, ex manubiis, ex auro coronario, quod neque consumptum in monumento, neque in aerarium relatum sit, id ad decemviros referri jubet. Hoc capite multa sperant: in omnes imperatores heredesque eorum quaestionem suo judicio comparant; sed maximam pecuniam se a Fausto ablaturos arbitrantur. Quam caussam suscipere jurati judices noluerunt, hanc isti decemviri suscepere. Idcirco a judicibus fortasse praetermissam esse arbitrantur, quod sit ipsis reservata. Deinde etiam in reliquum tempus diligentissime sancit ut, quod quisque imperator pecuniae habeat, protinus ad decemviros deferat. Hic tamen excipit Pompeium; simillime, ut mihi videtur, atque illa lege qua peregrini Roma ejiciuntur Glaucippus excipitur. Non enim hac exceptione unus afficitur beneficio, sed unus privatur injuria. Sed cui manubias remittit, in hujus vectigalia invadit. Jubet enim pecuniam, si qua post nos consules ex novis vectigalibus recipiatur, hac uti decemviros. Quasi vero non intelligamus haec eos vectigalia, quae Cn. Pompeius adjunxerit, vendere cogitare.

V. Videtis jam, patres conscripti, omnibus rebus et modis

duas caussas] 'Caussa' here means 'res,' 'negotium,' 'two matters,' 'two things.'—'aurum coronarium:' crown-gold: crowns were sent to a victorious general by the provincials to be carried in his triumph. But such gold or gold crown could not be received unless a triumph had been decreed (In Pisonem, c. 35. 37). Gellius (v. 6) defines the 'aurum coronarium' to be golden crowns sent for a triumph: "Triumphales coronae sunt aureae quae imperatoribus ob honorem triumphi mittuntur." Pliny (H. N. 33. c. 3), says: "Claudius successor ejus quum de Britannia triumpharet inter coronas aureas VII pondo habere quam contulisset Hispania Citerior, IX quam Gallia Comata, titulis indicavit." Cn. Manlius got 200 crowns for his victories in Asia (Livy, 39. c. 7: see also Livy, 38. c. 37). Klotz says that this 'aurum coronarium' was money given to the victorious general in place of golden crowns; and so it is said in other books. Klotz and others probably had not read the following remark of Turnebus: "nugantur hic nonnulli, a provincialibus datas bene meritis rectoribus initio coronas, postea autem aurum pro coronis, homines antiquitatis ignari."—'quod neque consumptum in monumento:' not employed in building a temple, in raising a statue, or in other public works.

Fausto] This was the son of the Dictator L. Sulla. The father had helped himself freely to all that he wanted, and Cicero says that the Decemviri hoped to get a good deal out of the son. See Pro Cluentio, c. 35.—'deferat:' E.; 'referat,' F.

Glaucippus] He is unknown. Glaucippus was excepted from the Lex Papia (B.C. 65) by which Peregrini were banished from Rome.

constructam et coacervatam pecuniam decemviralem. Minuetur hujus pecuniae invidia; consumetur enim in agrorum emptionibus. Optime. Quis igitur emet agros istos? Iidem decemviri: tu Rulle, missos enim facio ceteros, emes quod voles; vendes quod voles; utrumque horum facies quanti voles. Cavet enim vir optimus ne emat ab invito. Quasi vero non intelligamus ab invito emere injuriosum esse, ab non invito quaestuosum. Quantum tibi agri vendet, ut alios omittam, socer tuus? et, si ego ejus aequitatem animi probe novi, vendet non invitus. Facient idem ceteri libenter, ut possessionis invidiam pecunia commutent; accipiant quod cupiunt; dent quod retinere vix possunt. Nunc perspicite omnium rerum infinitam atque intolerandam licentiam. Pecunia coacta est ad agros emendos: ii porro ab invitis non ementur. Si consenserint possessores non vendere, quid futurum est? Referetur pecunia? non licet. Exigetur? vetat. Verum esto: nihil est quod non emi possit, si tantum des quantum velit venditor. Spoliemus orbem terrarum, vendamus vectigalia, effundamus aerarium, ut locupletatis aut invidiae aut pestilentiae possessoribus agri tamen emantur.

Quid tum, quae erit in istos agros deductio? quae totius rei ratio atque descriptio? Deducentur, inquit, coloniae. Quo, quorum hominum, in quae loca? Quis enim non videt in coloniis esse

5. *injuriosum — quaestuosum.*] To buy from a man against his will is a wrong done to him. 'Injuriosum' therefore means a wrong to the vendor done by him who compels the sale. 'Quaestuosum" means a gain, and I agree with those who think that it is the sellers who are spoken of as gaining, for they will sell what they can hardly keep and what has little value. Manutius makes both words refer to the Decemviri. As to the first word, we may take it as we please, for if the Decemviri do a wrong, it is a wrong done to another. As to the second word, he says that Cicero means that the Decemviri will make a profit out of the transaction. He refers to the next oration (c. 26: "hic ager omnis," &c.; and c. 36: "ut iidem partim invidiosos," &c.) to support his explanation.

socer tuus?] His father-in-law, Valgius, who held a great deal of land got in Sulla's time.

Referetur] "Will the money be repaid into the 'aerarium?' The law does not allow that. Will it be demanded of the 'decemviri?' The law forbids that. But suppose that it is so? There is no land that cannot be bought, if you will give as much as the vendor asks."

aut invidiae] Many of Cicero's expressions are probably new; forms of speech framed for the occasion. A possessor of land, of public land, or of private property which had been confiscated, was an ordinary expression. A possessor of 'an evil report and of pestilence' is an oratorical expression, a form of speech which may be permitted, because it may be understood by tacit reference to a regular and usual form. Those men who had got land in Sulla's time by all kinds of irregular ways, held it by a title which nobody would admit; and they would certainly have had difficulty in selling their land. There would consequently be a general depreciation of the value of land: it would not be saleable. Many parts of Italy also were unwholesome. Neglect of cultivation and want of drainage made many spots more unwholesome than they were in a cultivated state. There are some useful remarks on the insalubrity of Italy and its causes in Dureau de la Malle, Économie Politique des Romains, vol. ii. chap. 2, &c.

haec omnia consideranda? Tibi nos, Rulle, et istis tuis harum omnium rerum machinatoribus totam Italiam inermem tradituros existimasti, quam praesidiis confirmaretis, coloniis occuparetis, omnibus vinclis devinctam et constrictam teneretis? Ubi enim cavetur ne in Janiculo coloniam constituatis, ne urbem hanc urbe alia premere atque urgere possitis? Non faciemus, inquit. Primum nescio: deinde timeo: postremo non committam ut vestro beneficio potius quam nostro consilio salvi esse possimus. VI. Quod vero totam Italiam vestris colonis complere voluistis, id cujusmodi esset neminemne nostrum intellecturum existimavistis? Scriptum est enim: QUAE IN MUNICIPIA, QUASQUE IN COLONIAS DECEMVIRI VELINT, DEDUCANT COLONOS QUOS VELINT, ET IIS AGROS ASSIGNENT QUIBUS IN LOCIS VELINT: ut quum totam Italiam militibus suis occuparint, nobis non modo dignitatis retinendae sed ne libertatis quidem recuperandae spes relinquatur. Atque haec a me suspicionibus et conjectura coarguuntur. Jam omnis omnium tolletur error; jam aperte ostendent sibi nomen hujus rei publicae, sedem Urbis atque imperii, denique hoc templum Jovis optimi maximi atque hanc arcem omnium gentium displicere.

salvi] Cicero fears that there may be danger from some of these coloniae, or he affects fear. He supposes that the Decemviri may choose to plant a town on the Janiculus, the hill opposite to Rome on the other side of the Tiber. This matter is mentioned again in the next oration. He expresses the same fear about the colonization of Capua; and there was reason for it. He saw that the time was come when the soldier would be the master of the State. Sulla had already ruled by the sword, and in his dictatorship for the first time the Roman army appears distinctly opposed to the citizen, and the master of the citizen. Such is now the condition of the greatest part of Europe. After nineteen centuries things are the same. A standing army must become the master of a State. What is it there for except to rule? Rome did not yet fall before barbarian invaders; she fell before her own soldiers, who had been made brutal and savage in foreign lands; before her own generals who had commanded so long that they had forgotten how to obey. Rome's own armies were the invaders of Italy; and Cicero feared to see the soldier planted on the lands of Campania.

6. *municipia,*] By the enactment of the Lex Julia (B. C. 90), and the Lex Plautia Papiria (B. C. 89), all Italy, except the Provincia of Gallia Cisalpina, became Roman. The Lex Pompeia (B. C. 89) gave the Civitas Romana to the people south of the Padus, and the Latinitas to the Transpadani. The towns of Gallia Cispadana thus became Municipia in the sense which Municipium then had, and the towns of Gallia Transpadana were placed in the same condition as Coloniae Latinae. Those towns, however, of Cispadana which were Coloniae Romanae of course remained what they were before, such as Mutina and Parma. Probably when Cicero says 'totam Italiam' he means the whole peninsula, though the term Italia properly did not yet comprehend Gallia Cisalpina, which remained a province till B. C. 43. The original organization of Italy, as it has been said in the Introduction to these orations, was a number of towns each with its district; and each chief town of a district had a number of smaller places dependent on it. All the names of places which occur in the Roman legislation of this period are, Oppida, Municipia, Coloniae, Praefecturae, Fora, Vici, Conciliabula, Loca. The Municipia, Coloniae, and Praefecturae are comprehended under the general names, Oppida or Municipia; and the remaining places under the name Locus. In the Lex Rubria (l. 42), Municipium, Colonia, Locus comprehend every thing; and so in this passage of Cicero Municipia, Coloniae, are equally comprehensive.

Capuam deduci colonos volunt; illam urbem huic urbi rursus opponere, illuc opes suas deferre et imperii nomen transferre cogitant. Qui locus propter ubertatem agrorum abundantiamque rerum omnium superbiam et crudelitatem genuisse dicitur, ibi nostri coloni delecti ad omne facinus a decemviris collocabuntur. Et, credo, qua in urbe homines in veteri dignitate fortunaque nati copiam rerum moderate ferre non potuerunt, in ea isti vestri satellites modeste insolentiam suam continebunt. Majores nostri Capua magistratus, senatum, consilium commune, omnia denique insignia rei publicae sustulerunt, neque aliud quidquam in urbe nisi inane nomen Capuae reliquerunt; non crudelitate,—quid enim illis fuit clementius qui etiam externis hostibus victis sua saepissime reddiderunt?—sed consilio, quod videbant, si quod rei publicae vestigium illis moenibus contineretur, urbem ipsam imperio domicilium praebere posse. Vos haec, nisi evertere rem publicam cuperetis, ac vobis novam dominationem comparare, credo, quam perniciosa essent non videretis? VII. Quid enim cavendum est in coloniis deducendis? Si luxuries, Hannibalem ipsum Capua corrupit;

Capuam] When Cicero delivered his oration against Piso, Capua was then colonized; and he speaks of the measure in more moderate language (c. 2). The hostility of Rome to the rich city of Capua had its origin in fear of a rival. When the Campani joined the Latini against the Romans, they were punished by the loss of the Falernus ager, the fertile territory north of the Vulturnus, which was distributed among the Roman Plebs. The Campanian equites who had been faithful to Rome or false to their country received the Roman citizenship; and the rest of the citizens of Campania received the 'civitas sine suffragio,' by which, under the name of a benefit, they became the subjects of Rome, B. C. 340 (Livy, viii. 11. 14). They were 'cives non optimo jure:' they had Commercium and Connubium, but not the Suffragium et Honores. The alliance of Capua and Rome continued to the time of the second Punic war and the battle of Cannae (B. C. 216), after which Capua joined Hannibal (Liv. 23, c. 2). The Romans compelled Capua to surrender B. C. 211, and they used their victory with unrelenting cruelty (Livy, 26. c. 14, &c.). The Roman commander Fulvius put to death the Campanian senators who had not committed suicide; many of the nobles were put in prison; other citizens were put in custody in the Latin towns, and many were sold. The town was spared simply that it might furnish dwellings for the cultivators of the fertile territory. The whole territory and all the buildings were declared the property of the Roman State. ('Ager omnis et tecta publica Populi Romani facta,' Livy, 26, c. 16.) Capua became a mere number of houses. It lost all political character: it had neither Senate, popular assembly, nor magistrates; and justice was administered by a Praefectus sent from Rome. The 'consilium commune' of Cicero is what Livy (26, c. 16) calls 'plebis concilium,' the popular assembly (corpus nullum civitatis, nec senatus nec magistratus esse). Capua, by reason of the fertility of its territory, became a flourishing town, though it had no political existence at the time when Cicero delivered these orations. It was about 152 years after the terrible punishment inflicted on the town that it again became a political community by being made a 'colonia' under the Lex Julia (B. C. 59), a change to which Cicero alludes in another place (Pro P. Sestio, c. 4. B. C. 56) as having been made between the date of his consulship, B. C. 63, and the time when he was defending Sestius (Velleius, ii. 44).

7. *Hannibalem ... corrupit;*] This story is told in Livy (23. c. 18). Some modern writers affirm that it is untrue, or that there is great exaggeration in Livy about the effect of Hannibal's men wintering in Capua. He gained victories after this time, and

si superbia, nata inibi esse ex Campanorum fastidio videtur; si praesidium, non praeponitur huic urbi ista colonia, sed opponitur. At quemadmodum armatur? Dii immortales! Nam bello Punico, quidquid potuit Capua, potuit ipsa per sese: nunc omnes urbes quae circum Capuam sunt a colonis per eosdem decemviros occupabuntur. Hanc enim ob caussam permittit ipsa lex, in omnia quae velint oppida colonos ut decemviri deducant quos velint. Atque his colonis agrum Campanum et Stellatem campum dividi jubet.

Non queror diminutionem vectigalium, non flagitium hujus jacturae atque damni; praetermitto illa, quae nemo est quin gravissime et verissime conqueri possit: nos caput patrimonii publici, pulcherrimam populi Romani possessionem, subsidium annonae, horreum belli, sub signo claustrisque rei publicae positum vectigal servare non potuisse; eum denique nos agrum P. Rullo concessisse, qui ager ipse per sese et Sullanae dominationi et Gracchorum largitioni restitisset. Non dico, solum hoc in re publica vectigal esse quod amissis aliis remaneat; intermissis, non conquiescat; in pace niteat, in bello non obsolescat; militem sustentet, hostem non pertimescat. Praetermitto omnem hanc orationem et contioni reservo: de periculo salutis ac libertatis loquor. Quid enim existimatis integrum vobis in re publica fore aut in vestra libertate

maintained himself for many years in Italy. But why should we doubt about what the historian says, when it is certain that an army like Hannibal's, placed for a winter in a luxurious town, would suffer greatly in discipline. The men must have been dispersed through all the houses in Capua, for we do not suppose they had barracks; and if they had, the matter would not have been much better. How was discipline to be kept up among barbarian troops who were daily enjoying good food, wine, and women? It was enough to ruin any army. When Flaccus was letting the houses and lands of Capua, he kept his army out of the crowded part of the city at the gates and walls, where they constructed huts for themselves after military fashion; and one reason was that his men might not be spoiled by the pleasures of the place (Livy, 27, c. 3). But long before this the Romans had experience of Capua, when their troops were sent there to winter in order to protect the country from the Samnites. The troops were distributed through the cities of Campania, but the movement to mutiny came from the soldiers in Capua, who were corrupted by the means there offered for gratifying every desire (Livy, 7. c. 38). Capua was the seat of pleasure, rich and sensual. It contained every thing that a soldier could desire; and the soldier would make the best use of his pleasant quarters. A Russian army turned loose in London or Paris for a winter would not easily be got together again.

Stellatem campum] The Stellatis was near Cales (Livy, ix. 44; x. 31; xxii. 13) and a part of the Campanian territory. When Suetonius (Julius, c. 20) is speaking of the division of the Campus Stellatis under the Lex Julia, he says of it, 'Campum Stellatem majoribus consecratum;' where 'consecratum' is said to be the reading of all the MSS. The learned Turnebus remarks that Cicero says nothing of this 'consecratio,' for if it were 'ager consecratus,' he might have used that fact as an argument against the distribution of this land. Torrentius proposes, as one way of removing the difficulty, to read 'conservatum' in Suetonius. The opinions of different editors are given in Burmann's edition of Suetonius, from all which opinions I derive no certain conclusion.

ac dignitate retinenda, quum Rullus atque ii quos multo magis quam Rullum timetis, cum omni egentium atque improborum manu, cum omnibus copiis, cum omni argento et auro Capuam et urbes circa occuparint? His ego rebus, patres conscripti, resistam vehementer atque acriter, neque patiar homines ea me consule expromere, quae contra rem publicam jam diu cogitarint.

Errastis, Rulle, vehementer et tu et nonnulli collegae tui, qui sperastis vos contra consulem, veritate non ostentatione popularem, posse in evertenda re publica populares existimari. Lacesso vos; in contionem voco; populo Romano disceptatore uti volo. VIII. Etenim ut circumspiciamus omnia quae populo grata atque jucunda sunt, nihil tam populare quam pacem, quam concordiam, quam otium reperiemus. Sollicitam mihi civitatem suspicione, suspensam metu, perturbatam vestris legibus et contionibus et seditionibus tradidistis: spem improbis ostendistis; timorem bonis injecistis: fidem de foro, dignitatem de re publica sustulistis. Hoc motu atque hac perturbatione animorum atque rerum, quum populo Romano vox et auctoritas consulis repente in tantis tenebris illuxerit, quum ostenderit nihil esse metuendum, nullum exercitum, nullam manum, nullas colonias, nullam venditionem vectigalium, nullum imperium novum, nullum regnum decemvirale, nullam alteram Romam, neque aliam sedem imperii nobis consulibus futuram, summamque tranquillitatem pacis atque otii, verendum, credo, nobis erit ne vestra ista praeclara lex agraria magis popularis esse videatur. Quum vero scelera consiliorum vestrorum fraudemque legis et insidias, quae ipsi populo Romano a popularibus tribunis plebis fiant, ostendero, pertimescam, credo, ne mihi non liceat contra vos in contione consistere, praesertim quum mihi deliberatum et constitutum sit, ita gerere consulatum, quo uno modo geri graviter et libere potest, ut neque provinciam neque

urbes circa] 'urbes circa Capuam;' Baiter. E. has 'circa eam.'—'jam diu cogitarint:' 'jam diu cogitarunt,' Baiter. 'Jam' is in E. F. P. T. 'Cogitarunt' is from Lauredanus, who merely recommends it, and in terms which show that he knew Latin well. He says of 'cogitarint:' "potest ferri: sed malim, *diu cogitarunt*, ut apertius res ipsa demonstretur."—'disceptatore:' as a judge, one who is to decide between us: 'rei sententiaeque moderator,' as Cicero says (Partit. c. 3). See Vol. I. Verr. ii. 3. c. 72; and Pro Caecina, c. 2.

8. *fidem de foro,*] Political agitation disturbed credit, as we call it. It disturbed the regular order of things, and the consequence of such disturbance is want of credit. People will not trust one another, and debts are not regularly paid. Turnebus rightly explains 'fides' to mean payment, not merely of borrowed money, as he says, but all payments. He properly compares De Imp. Pomp. c. 7, 'fidem concidisse;' and refers to the passage in Cicero's Partitiones (c. 22): "In communione autem quae posita pars est justitia dicitur; eaque erga deos religio, erga parentes pietas, vulgo autem bonitas, creditis in rebus fides."

provinciam] Neither Cicero nor his rival in oratory Hortensius took a Provincia after

honorem neque ornamentum aliquod aut commodum neque ullam rem quae a tribuno plebis impediri possit appetiturus sim. Dicit frequentissimo senatu consul Kalendis Januariis sese, si status hic rei publicae maneat, neque aliquod negotium exstiterit quod honeste subterfugere non possit, in provinciam non iturum. Sic me in hoc magistratu geram, patres conscripti, ut possim tribunum plebis rei publicae iratum coercere, mihi iratum contemnere.

IX. Quamobrem, per deos immortales, colligite vos, tribuni plebis; deserite eos a quibus, nisi prospicitis, brevi tempore deseremini; conspirate nobiscum; consentite cum bonis; communem rem publicam communi studio atque amore defendite. Multa sunt occulta rei publicae vulnera; multa nefariorum civium perniciosa consilia. Nullum externum periculum est; non rex, non gens ulla, non natio pertimescenda est: inclusum malum, intestinum ac domesticum est. Huic pro se quisque nostrum mederi atque hoc omnes sanare velle debemus. Erratis, si senatum probare ea quae a me dicuntur putatis, populum autem esse in alia voluntate. Omnes qui se incolumes volent, sequentur auctoritatem consulis, soluti a cupiditatibus, liberi a delictis, cauti in periculis, non timidi in contentionibus. Quod si qui vestrum spe ducitur se posse turbulenta ratione honori velificari suo, primum me consule id sperare desistat; deinde habeat me ipsum sibi documento, quem equestri ortum loco consulem videt, quae vitae via facillime viros bonos ad honorem dignitatemque perducat. Quod si vos vestrum mihi studium, patres conscripti, ad communem dignitatem defendendam profitemini, perficiam profecto id, quod maxime res publica desiderat, ut hujus ordinis auctoritas, quae apud majores nostros fuit, eadem nunc longo intervallo rei publicae restituta esse videatur.

the consulship. Q. Scaevola, the Pontifex, is also said to have done the same. The 'provinciae' were at this time decreed to the Consules according to a Lex Sempronia, but we must suppose that the Tribuni pl. could intercede even against the Lex: or if any thing was asked of the popular assembly, they could intercede there also. Cicero would not leave Rome unless some risk or danger to the State showed itself, which he could not honourably avoid meeting (quod honeste subterfugere non possim).

9. *velificari*] This is a nautical expression, of which kind the Romans had some, and the Athenians still more. It means 'to set his sails to carry him to the "honores" of the State.' It is the same, says Forcellini, as 'velis remisque agere.' It has also a derived sense nearly the same in two other passages cited by Forcellini (Ad Div. viii. 10; Florus, i. 9: "Brutus favori civium etiam domus suae clade velificatus est"). Juvenal (x. 174) uses the past form in a different way, "velificatus Athos."

M. TULLII CICERONIS

DE

LEGE AGRARIA

CONTRA

P. SERVILIUM RULLUM, TR. PL.

ORATIO SECUNDA,

AD POPULUM.

I. Est hoc in more positum, Quirites, institutoque majorum, ut ii qui beneficio vestro imagines familiae suae consecuti sunt, eam primam habeant contionem qua gratiam beneficii vestri cum suorum laude conjungant. Qua in oratione nonnulli aliquando digni majorum loco reperiuntur; plerique autem hoc perficiunt ut tantum majoribus eorum debitum esse videatur unde etiam quod posteris solveretur redundaret. Mihi quidem apud vos de meis majoribus dicendi facultas non datur; non quo non tales fuerint, quales nos illorum sanguine creatos disciplinisque institutos videtis, sed quod laude populari atque honoris vestri luce caruerunt. De me ipso autem vereor ne arrogantis sit apud vos dicere, ingrati tacere. Nam et quibus studiis hanc dignitatem consecutus sim memetipsum commemorare perquam grave est, et silere de tantis vestris beneficiis nullo modo possum. Quare adhibebitur a me certa ratio moderatioque dicendi, ut quid a vobis acceperim comme-

1. *imagines*] See Vol. I. Verr. ii. 5. c. 14.—'tantum—debitum—redundaret:' the debt of the people to the ancestors is so great that something still remains to be paid to their posterity; to be paid to their posterity, not for their own merits, but as part of the debt due to the progenitors. The 'novus homo' cannot refrain from making a remark on the unworthiness of many of the 'nobiles,' on whom the 'honores' were conferred without any merit of their own (Vol. I. Verr. ii. 5. c. 70).

Latin metaphors are sometimes confused. In one sentence we have a debt so large that it overflows; the receptacle is so full that it runs over (redundet). He uses 'redundare' in another passage (De Oratore, i. 6) and with another metaphor: "Etenim ex rerum cognitione efflorescat et redundet oportet oratio;" flowers and water overflowing mixed together. In the first of these three orations (De Leg. Agr. i. 8), there is "quum vox et auctoritas consulis repente in tantis tenebris illuxerit;" a voice shining in the midst of darkness.—'Mihi quidem:' 'mihi, Quirites,' Baiter. 'Mihiq.,' P. 'Mihique,' E. F.

morem; quare dignus vestro summo honore singularique judicio sim, ipse modice dicam; si necesse erit, vos eosdem existimaturos putem qui judicavistis. Me perlongo intervallo prope memoriae

Me perlongo] See what he says in the Verrine orations, ii. 5. c. 70. Since the time of C. Marius no 'novus homo' had been elected consul, as some observe, an interval of forty years; but Manutius says that C. Caelius Caldus, 'homo novus,' had been elected consul thirty years before (B.C. 94). The two men of Arpinum made their way to the highest honours of the State by different arts, one by the sword, the other by his tongue and his pen, and by his merit too. The Romans chose Marius because they could not do without him. They wanted a soldier, and they took him. They chose him a second time because none of the 'nobiles' durst accept the honourable distinction of saving Italy. Sallust, who knew Cicero, says of him (Catil. c. 23): "Ea res (Catilinae conjuratio) imprimis studia hominum accendit ad consulatum mandandum M. Tullio Ciceroni. Namque antea pleraque nobilitas invidia aestuabat et quasi pollui consulatum credebant, si eum quamvis egregius homo novus adeptus foret. Sed ubi periculum advenit, invidia atque superbia post fuere." Again, he says of Marius (Jug. c. 63): "Etiam tum alios magistratus plebes, consulatum nobilitas inter se per manus tradebat. Novus nemo tam clarus neque tam egregiis factis erat quin is indignus illo honore et quasi pollutus haberetur" The 'nobiles' despised an upstart: they would keep all the good places for themselves. But they did not really despise, they envied and feared the man of merit, as all nobles do who have no merit of their own. Those who have merit of their own can afford to be more generous. It is instructive what Sallust says of the first election of Marius (c. 73): "Denique plebes sic accensa uti opifices agrestesque omnes, quorum res fidesque in manibus sitae erant, relictis operibus frequentarent Marium et sua necessaria post illius honorem ducerent. Ita perculsa nobilitate post multas tempestates novo homini consulatus mandatur: et postea populus a tr. pl. Manilio Mancino rogatus, quem vellet cum Jugurtha bellum gerere, frequens Marium jussit. Senatus paulo ante Metello decreverat: ea res frustra fuit." The men whose wealth was in their hands and arms, who had no credit save what their daily toil got for them, these men left their work to help the election of Marius. They knew that they had something to lose, their daily bread, if the enemy should not be defeated and tranquillity was not secured in Italy. The nobility yielded, and the people chose the man whom they wanted. It is rare that the judgment of a whole nation is wrong. If they want a man to do their work, and he is to be found, they can find him. But the man may sometimes be looked for in vain when he is wanted; a misfortune that may happen to a country when a small class has long had power, and the plebeian has not had the opportunity of showing what he can do. Where there is no class which appropriates to itself the honours and the high offices of the State, and the election is popular, a bad choice will often be made: but if men's fortunes and lives are in peril, they will choose the right man, and they will find him. Machiavelli, the clearest of all political writers, is of this mind (Discorsi i. cap. 47): "Credo ancora che si possa conchiudere, che mai un uomo prudente non debbe fuggire il giudizio popolare nelle cose particolari, circa le distribuzioni de' gradi e delle dignità; perchè solo in questo il popolo non s'inganna, e se s'inganna qualche volta, fia sì raro, che si inganneranno più volte i pochi uomini che avessero a fare simili distribuzioni."

Fear gave Marius his second consulship. (Jug. 114.) The Romans had been defeated in Gallia, and all Italy was in alarm: "ea tempestate spes atque opes civitatis in illo sitae." Again they chose a man who could do the work; and it was lucky for Rome that there was one.

All history is instructive, if it is read right, and Roman history is the most instructive of all. It shows both the advantages and the disadvantages to a State of an aristocratical class, a term not very exact, but everybody can give it a tolerably precise meaning: it shows, too, the good and the bad which are in the nature of a popular government or a popular element in government; the mischief almost unqualified by any good of a class whose power is in their wealth and in nothing else; the danger from a mass of people whose daily bread depends on their daily labour, or who are fed at the cost of those who have something. It contains the history of slavery too, and its debasing effect on the Roman people. This history presents to us all the great political questions of constitutional forms

temporumque nostrorum primum hominem novum consulem fecistis, et eum locum, quem nobilitas praesidiis firmatum atque omni ratione obvallatum tenebat, me duce rescidistis virtutique in posterum patere voluistis. Nec me tantummodo consulem, quod est ipsum per sese amplissimum, sed ita fecistis quomodo pauci nobiles in hac civitate consules facti sunt, novus ante me nemo. II. Nam profecto si recordari volueritis de novis hominibus, reperietis eos, qui sine repulsa consules facti sunt, diuturno labore atque aliqua occasione esse factos, quum multis annis post petissent quam praetores fuissent, aliquanto serius quam per aetatem ac per leges liceret; qui autem anno suo petissent, sine repulsa non esse factos: me esse unum ex omnibus novis hominibus, de quibus meminisse possimus, qui consulatum petierim quum primum licitum sit, consul factus sim quum primum petierim, ut vester honos ad mei temporis diem petitus, non ad alienae petitionis occasionem interceptus, nec diuturnis precibus efflagitatus, sed dignitate impetratus esse videatur. Est illud amplissimum, quod paullo ante commemoravi, Quirites, quod hoc honore ex novis hominibus primum me multis post annis affecistis, quod prima petitione, quod anno meo; sed tamen magnificentius atque ornatius esse illo nihil potest, quod meis comitiis non tabellam, vindicem tacitae libertatis, sed vocem

and of administration, which are not yet solved: free, however, nearly altogether, but not quite free, from one element of discord, matters of religion, which form so large a part of the cause of troubles in modern societies. Rome had this element to deal with under the later empire. Religion under the Republic had a great influence on the early Roman character, and on the whole, a beneficial influence. In Cicero's time all was changed: it was a political instrument in the hands of the 'nobiles,' so far as they could use it. In popular opinion, it was nothing save the pomp and magnificence of its festivals.

2. *anno meo;*] He means, as the context shows, that he was elected consul, not only as soon as he could be elected after being praetor, but also at as early an age as the law allowed a man to be elected consul. This age was forty-two complete. See Cicero, Phil. v. 17; De Imp. Pompeii, c. 21. The age at which 'magistratus' could be held were fixed by a Lex Villia (Livy, 40. c. 44). This Lex was called Annalis or Annaria. It was common for a man to fail in his first canvass for the consulship, and to be rejected. Cicero had not this mortification (sine repulsa consul factus est). His boast is that the 'honos' or office of consul was sought by him on the first occasion that the law allowed: he did not wait for the opportunity of some other person being a candidate whose merits might be small (ad alienae petitionis occasionem) and snatch from him (intercipere) that which the man might have had, if no other candidate had appeared.

tabellam,] Something is said of the 'tabella' or ballot voting in the oration Pro Plancio. Cicero says that he was declared consul by universal acclamation. The ceremony of the 'praecones' announcing the votes of each 'centuria' was not wanted at Cicero's election. (Comp. Vol. I. Verr. ii. 5. c. 15; Gellius, xii. 8.) He had no occasion to wait for the votes of the last 'tribus' which voted. He quickly obtained a majority, and there was no occasion to go further. He says that there was no ballot voting; but unless the affair was very irregular, the 'tribus' and their 'centuriae' were called in the usual order (De Leg. Agr. ii. 29), and there was some formal declaration of the vote of each 'centuria,' until Cicero had a majority, and that was

vivam prae vobis indicem vestrarum erga me voluntatum ac studiorum tulistis. Itaque me non extrema tribus suffragiorum, sed primi illi vestri concursus, neque singulae voces praeconum, sed una voce universus populus Romanus consulem declaravit. Hoc ego tam insigne, tam singulare vestrum beneficium, Quirites, quum ad animi mei fructum atque laetitiam duco esse permagnum, tum ad curam sollicitudinemque multo majus. Versantur enim, Quirites, in animo meo multae et graves cogitationes, quae mihi nullam partem neque diurnae neque nocturnae quietis impertiunt: primum tuendi consulatus, quae quum omnibus est difficilis et magna ratio, tum vero mihi praeter ceteros, cujus errato nulla venia, recte facto exigua laus et ab invitis expressa proponitur, non dubitanti fidele consilium, non laboranti certum subsidium nobilitatis ostenditur. III. Quod si solus in discrimen aliquod adducerer, ferrem, Quirites, animo aequiore; sed mihi videntur certi homines, si qua in re me non modo consilio, verum etiam casu lapsum esse arbitrabuntur, vos universos qui me antetuleritis nobilitati vituperaturi. Mihi autem, Quirites, omnia potius perpetienda esse duco quam non ita gerendum consulatum, ut in omnibus meis factis atque consiliis vestrum de me factum consiliumque laudetur. Accedit etiam ille mihi summus labor ac difficillima ratio consulatus gerendi, quod non eadem mihi qua superioribus consulibus lege et conditione utendum esse decrevi; qui aditum hujus loci conspectumque vestrum partim magno opere fugerunt, partim non vehementer secuti sunt. Ego autem non solum hoc in loco dicam, ubi est id dictu facillimum, sed in ipso senatu, in quo esse locus huic voci non videbatur, popularem me futurum esse consulem, prima illa mea oratione Kalendis Januariis dixi. Neque enim ullo modo facere possum ut, quum me intelligam non hominum potentium studio, non excellentibus gratiis paucorum, sed universi populi Romani judicio consulem ita factum ut nobilissimis hominibus longe praeponerer, non et in hoc magistratu et in omni vita essem popularis. Sed mihi ad hujusce verbi vim et interpretationem vehementer opus est vestra sapientia. Versatur enim magnus error propter insidiosas nonnullorum simu-

enough. His language is vague and must not be taken literally, particularly when he is glorifying himself.

3. *hoc in loco*] On the Rostra and before the Contio of Roman citizens. This was the tribune's place: the consul's was in the Senate. The consuls who belonged to the 'nobilitas' did not care about appearing before the popular assembly as he says.—'id dictu:' 'dictu id,' E. "*Id* spurium videtur" (Baiter). It seems to me as genuine as the rest.

ullo modo facere possum—essem popularis.] Baiter has "ullo modo possum, cum me—esse popularis;" an alteration for which there is no reason. Lauredanus proposed 'sim' for 'essem.' I think that 'essem' may be right.

lationes, qui, quum populi non solum commoda, verum etiam salutem oppugnant et impediunt, oratione assequi volunt ut populares esse videantur. Ego qualem Kalendis Januariis acceperim rem publicam, Quirites, intelligo; plenam sollicitudinis, plenam timoris; in qua nihil erat mali, nihil adversi, quod non boni metuerent, improbi exspectarent. Omnia turbulenta consilia contra hunc rei publicae statum et contra otium vestrum partim iniri, partim nobis consulibus designatis inita esse dicebantur. Sublata erat de foro fides non ictu aliquo novae calamitatis, sed suspicione ac perturbatione judiciorum, infirmatione rerum judicatarum: novae dominationes, extraordinaria non imperia sed regna quaeri putabantur. IV. Quae quum ego non solum suspicarer, sed plane cernerem, neque enim obscure gerebantur, dixi in senatu in hoc magistratu me popularem consulem futurum. Quid enim est tam populare quam pax? qua non modo ii quibus natura sensum dedit, sed etiam tecta atque agri mihi laetari videntur. Quid tam populare quam libertas? quam non solum ab hominibus, verum etiam a bestiis expeti atque omnibus rebus anteponi videtis. Quid tam populare quam otium? quod ita jucundum est ut et vos et majores vestri et fortissimus quisque vir maximos labores suscipiendos putet ut aliquando in otio possit esse, praesertim in imperio ac dignitate: qui idcirco etiam majoribus nostris praecipuam laudem gratiamque debemus, quod eorum labore est factum uti impune in otio esse possemus. Quare qui possum non esse popularis, quum videam haec omnia, Quirites, pacem externam, libertatem propriam generis ac nominis vestri, otium domesticum, denique omnia, quae vobis cara atque ampla sunt, in fidem et quodam modo in patrocinium mei consulatus esse collata? Neque enim, Quirites, illud vobis jucundum aut populare debet videri, largitio aliqua promulgata, quae verbis ostentari potest, re vera fieri nisi exhausto aerario nullo pacto potest. Neque vero illa popularia sunt existimanda, judiciorum perturbationes, rerum judicatarum infirmationes, restitutio

qualem—rem publicam,] He alludes in the following words to the designs of Catiline, to the failure of credit partly owing to a general insolvent act (novae tabulae) being talked of, to the Lex of Rullus, and probably many other things, about which we are not quite certain.

4. *dixi in senatu*] In the former speech, but the passage is lost.

Quid enim est tam populare] This is a rhetorical passage in Cicero's worst style. The liberty of the beast and the liberty of man are two names which differ as much in meaning as any two different words. But perhaps Cicero did not write the nonsense contained in the words "Quid tam populare—anteponi videtis," for these words are omitted in the text of E.: "sed in supremo margine ab eadem, ut Wundero videtur, manu scriptum."—'qui idcirco:' "quin Madvigius (ap. Ussingium):" Baiter. 'Qui' has no direct antecedent in the sentence; but I let it stand.

judiciorum perturbationes,] His hearers

damnatorum; qui civitatum afflictarum perditis jam rebus extremi exitiorum solent esse exitus: nec si qui agros populo Romano pollicentur, sed si aliud quidem obscure moliuntur, aliud spe ac specie simulationis ostentant, populares existimandi sunt.

V. Nam vere dicam, Quirites, genus ipsum legis agrariae vituperare non possum. Venit enim mihi in mentem, duos clarissimos, ingeniosissimos, amantissimos plebis Romanae viros, Ti. et C. Gracchos, plebem in agris publicis constituisse qui agri a privatis antea possidebantur. Non sum autem ego is consul qui, ut plerique, nefas esse arbitrer Gracchos laudare; quorum consiliis, sapientia, legibus multas esse video rei publicae partes constitutas. Itaque ut initio mihi designato consuli nuntiabatur, legem agrariam tribunos plebis designatos conscribere, cupiebam quid cogitarent cognoscere. Etenim arbitrabar, quoniam eodem anno gerendi nobis essent magistratus, esse aliquam oportere inter nos rei publicae bene administrandae societatem. Quum familiariter me in eorum sermonem insinuarem ac darem, celabar, excludebar; et quum ostenderem, si lex utilis plebi Romanae mihi videretur, auctorem me atque adjutorem futurum, tamen aspernabantur hanc liberalitatem meam; negabant me adduci posse ut ullam largitionem probarem. Finem feci offerendi mei, ne forte mea sedulitas aut insidiosa aut impudens videretur. Interea non desistebant clam inter se convenire, privatos quosdam adhibere, ad suos coetus occultos noctem adjungere et solitudinem. Quibus rebus quanto

might know exactly what he meant; but the critics do not agree in their interpretation. It is not very material. He uses general terms, which we may understand in the same way, generally.—'extremi—exitus:' Compare Verr. ii. 5. c. 6, note on 'exitiales exitus.'—'sed si aliud:' 'sed aliud,' Garatoni, followed by Baiter. 'Sed si aliud,' E. F. P.

populares existimandi] Something is said on this word in Vol. I. Verr. ii. 5. c. 6. Cicero here defines the word to suit his own views. He wished to be a partizan of the 'nobiles' in the Senate, and 'popularis' on the Rostra. Many political terms like 'popularis' mean just what a man pleases, any thing for the occasion.

5. *Ti. et C. Gracchos,*] How could Cicero in this address to the people, in which he claims to be 'popularis,' speak otherwise of the Gracchi? Yet perhaps he did not say what he thought. He knew that the people knew that the Gracchi meant to do them a service by planting them on those public lands which were occupied (possidebantur) by private persons, and used as if they belonged to them. At a later time (De Am. c. 12) he spoke in different terms of the Gracchi, and he misrepresented them. In the De Officiis (ii. 12) he says that they were justly put to death. An honest man would say that they were murdered. In the De Officiis he has not one single good thing to say of them. Here he speaks of many of their Leges being good. "The Gracchi proposed and carried enactments about the public land, military matters, in reference to the Socii, the Annona, the Judicia, on appeal (de provocatione), as Plutarch says; also on the 'provinciae consulares,' and other matters. By these laws many parts of the State were settled." (Turnebus.)

auctorem] The 'auctor' is not the 'lator,' for Rullus was the 'lator.' He who would speak in favour of a Lex, and give to it his 'auctoritas,' was 'auctor.' See Vol. I. Verr. ii. 5. c. 22.

in metu fuerimus, ex vestra sollicitudine, in qua illis temporibus fuistis, facile assequi conjectura poteritis. Ineunt tandem magistratus tribuni plebis: contio tandem exspectata P. Rulli, quod et princeps erat agrariae legis, et truculentius se gerebat quam ceteri. Jam designatus alio vultu, alio vocis sono, alio incessu esse meditabatur, vestitu obsoletiore, corpore inculto et horrido, capillatior quam ante, barbaque majore; ut oculis et aspectu denuntiare omnibus vim tribuniciam et minitari rei publicae videretur. Legem hominis contionemque exspectabam. Lex initio nulla proponitur: contionem in primis advocari jubet: summa cum exspectatione concurritur. Explicat orationem sane longam, et verbis valde bonis. Unum erat quod mihi vitiosum videbatur, quod tanta ex frequentia inveniri nemo potuit qui intelligere posset quid diceret. Hoc ille utrum insidiarum caussa fecerit an hoc genere eloquentiae delectetur nescio. Tamen si qui acutiores in contione steterant, de lege agraria nescio quid voluisse eum dicere suspicabantur. Aliquando tandem me designato lex in publicum proponitur. Concurrunt jussu meo plures uno tempore librarii: descriptam ad me legem afferunt. VI. Omni hoc ratione vobis confirmare possum, Quirites, hoc animo me ad legendam legem cognoscendamque venisse ut, si eam vobis accommodatam atque utilem esse intelligerem, auctor ejus atque adjutor essem. Non enim natura neque discidio neque odio penitus insito bellum nescio quod habet susceptum consulatus cum tribunatu, quia persaepe seditiosis atque improbis tribunis plebis boni et fortes consules obstiterunt, et quia vis tribunicia nonnumquam libidini restitit consulari. Non potestatum dissimilitudo, sed animorum disjunctio dissensionem facit. Itaque hoc animo legem sumpsi in manus ut eam cuperem esse aptam vestris commodis, et ejusmodi quam consul re non oratione popularis et honeste et libenter posset defendere. Atqui ego a primo capite legis usque ad extremum reperio, Quirites, nihil aliud cogitatum, nihil aliud susceptum, nihil aliud actum, nisi uti decem reges aerarii, vectigalium, provinciarum omnium, totius rei publicae, regnorum, liberorum populorum, orbis denique terrarum domini constituerentur legis agrariae simulatione atque nomine. Sic confirmo, Quirites, hac lege agraria pulchra atque

Tamen si qui] E. F. A. 'Tametsi,' P. without 'qui.' 'Tametsi qui,' Lambinus, Baiter. Lambinus preferred his own reading to the text of Cicero.—'in publicum proponitur:' this was the 'promulgatio,' the publication of the proposed Lex. Cicero (De Legibus, iii. 4) says: "promulgata proposita in aerario cognita agunto." The Lex was placed up to be read, and Cicero had a copy of it taken for his use.

populari dari vobis nihil, condonari certis hominibus omnia; ostentari populo Romano agros, eripi etiam libertatem; privatorum pecunias augeri, publicas exhauriri: denique, quod est indignissimum, per tribunos plebis, quos majores praesides libertatis custodesque esse voluerunt, reges in civitate constitui. Quae quum exposuero, si falsa vobis videbuntur esse, sequar auctoritatem vestram, mutabo meam sententiam. Sin insidias fieri libertati vestrae simulatione largitionis intelligetis, nolitote dubitare plurimo sudore et sanguine majorum [vestrorum] partam vobisque traditam libertatem nullo vestro labore consule adjutore defendere.

VII. Primum caput est legis agrariae, quo, ut illi putant, tentamini leviter, quo animo libertatis vestrae deminutionem ferre possitis. Jubet enim TRIBUNUM PLEBIS, QUI EAM LEGEM TULERIT, CREARE DECEMVIROS PER TRIBUS SEPTEMDECIM, UT, QUEM NOVEM TRIBUS FECERINT, IS DECEMVIR SIT. Hic quaero quam ob caussam initium rerum ac legum suarum hinc duxerit, ut populus Romanus suffragio privaretur. Toties legibus agrariis curatores constituti sunt, triumviri, quinqueviri, decemviri: quaero a populari tribuno plebis, ecquando nisi per XXXV tribus creati sunt. Etenim quum omnes potestates, imperia, curationes ab universo populo Romano proficisci convenit, tum eas profecto maxime quae constituuntur ad populi fructum aliquem et commodum, in quo et universi deligant quem populo Romano maxime consulturum putent, et unus quisque studio et suffragio suo viam sibi ad beneficium impetrandum munire possit. Hoc tribuno plebis potissimum venit in mentem populum Romanum universum privare suffragiis, paucas tribus, non certa conditione juris, sed sortis beneficio fortuitu ad usurpandam libertatem vocare. ITEM, inquit, EODEM MODO, capite altero, UT COMITIIS PONTIFICIS MAXIMI. Ne hoc quidem vidit, majores nostros tam fuisse populares ut, quod per populum creari fas non erat propter religionem sacrorum, in eo tamen

6. *condonari*] This word generally means to remit, or excuse; but here it means to give. The preposition 'con' in composition with many verbs expresses no notion of any unity or concurrence, but it seems to add to the force of the word. (See c. 15, 'permissa et condonata.')

7. *curationes*] Potestas and Imperium express the authority of the 'majores magistratus.' 'Curatio' is the office of a curator, one who has no 'potestas' or Imperium, but only a special commission of some kind. Cicero has just enumerated Triumviri and others as Curatores. There were Curatores Viarum, Curatores Annonae, and others.

viam—munire] See the Index.—"ad usurpandam libertatem:" "to the exercise of their liberty," that is, of the suffrage. P. Manutius explains the word right.

propter religionem] The Roman patricians had originally both the political power and the priestly offices. The people could not elect a Pontifex, for the Roman notions of religion did not allow the people to participate in the ceremonial of such an election. The Auspicia and Sacra belonged to the

propter amplitudinem sacerdotii voluerint populo supplicari. Atque hoc idem de ceteris sacerdotiis Cn. Domitius, tribunus plebis, vir clarissimus, tulit; quod populus per religionem sacerdotia mandare non poterat, ut minor pars populi vocaretur; ab ea parte qui esset factus, is a collegio cooptaretur. Videte quid intersit inter Cn. Domitium, tribunum plebis, hominem nobilissimum, et P. Rullum, qui tentavit, ut opinor, patientiam vestram quum se nobilem esse diceret. Domitius, quod per caerimonias populi fieri non poterat, ratione assecutus est ut id, quoad posset, quoad fas esset, quoad liceret, populi ad partes daret: hic, quod populi semper proprium fuit, quod nemo imminuit, nemo mutavit, quin ii, qui populo agros essent assignaturi, ante acciperent a populo beneficium quam darent, id totum eripere vobis atque e manibus extorquere conatus est. Ille, quod dari nullo modo poterat, tamen quodam modo dedit: hic, quod adimi nullo pacto potest, tamen quadam ratione eripere conatur.

VIII. Quaeret quispiam in tanta injuria tantaque impudentia quid spectarit. Non defuit consilium: fides erga plebem Romanam, aequitas in vos libertatemque vestram vehementer defuit. Jubet enim comitia decemviris habere creandis eum qui legem tulerit. Hoc dicam planius. Jubet Rullus, homo non cupidus neque appetens, habere comitia Rullum. Nondum reprehendo. Video fecisse alios. Illud, quod nemo fecit, de minore parte populi, quo pertineat videte. Habebit comitia: volet eos renuntiare, quibus regia potestas hac lege quaeritur. Universo populo neque ipse committit, neque illi horum consiliorum auctores committi recte putant posse. Sortietur tribus idem Rullus. Homo felix educet quas volet tribus. Quos novem tribus decemviros fecerint, ab eodem Rullo eductae, hos omnium rerum, ut jam ostendam,

patricians. The Pontifices were originally elected into the vacant places in the college by the remaining members: this was called 'cooptatio.' The Pontifex Maximus, however, was elected by the people as early as B.C. 212 (Livy, 25. c. 5); and yet we find an example of a Pontifex elected by 'cooptatio' after that time (Livy, 40. c. 42, an obscure passage). Cicero says here that the Pontifex Maximus was elected by the people before Cn. Domitius (B.C. 104) carried the Lex about the other Sacerdotia. By this Lex a part of the people, seventeen 'tribus,' were to choose a Sacerdos, and the Collegium retained the formal power of admitting him. Sulla (B.C. 81) repealed the Lex Domitia, but it was enacted again in this year (B.C. 63).—The word 'supplicari' is sometimes used in the passive form. It is a strong expression, for it means "that the candidates should humbly sue to the 'populus' for the office."

per caerimonias] This means the same as 'per religionem,' a little above; the obstacle was religion. But we cannot say 'per caerimonias populi,' and there is some error in 'populi.' Perhaps it ought to be omitted. The expression 'populi ad partes' is also strange, though nobody can doubt what the orator means to say. He means 'part of the people;' but there is probably some error here also.

dominos habebimus. Atque ii ut grati ac memores beneficii esse videantur, aliquid se novem tribuum notis hominibus debere confitebuntur: reliquis vero sex et xx tribubus nihil erit quod non putent posse suo jure se denegare. Quos tandem igitur decemviros fieri vult? Se primum. Qui licet? Leges enim sunt veteres, neque eae consulares, si quid interesse hoc arbitramini, sed tribuniciae, vobis majoribusque vestris vehementer gratae atque jucundae. Licinia est lex et altera Aebutia, quae non modo eum qui tulerit de aliqua curatione ac potestate, sed etiam collegas ejus, cognatos, affines excipit, ne eis ea potestas curatiove mandetur. Etenim, si populo consulis, remove te a suspicione alicujus tui commodi; fac fidem te nihil nisi populi utilitatem et fructum quaerere; sine ad alios potestatem, ad te gratiam beneficii tui pervenire: nam hoc quidem vix est liberi populi, vix vestrorum animorum ac magnificentiae. IX. Quis legem tulit? Rullus. Quis majorem partem populi suffragiis prohibuit? Rullus. Quis comitiis praefuit? Quis tribus quas voluit evocavit nullo custode sortitus? Quis decemviros quos voluit renuntiavit? Idem Rullus. Quem principem renuntiavit? Rullum. Vix mehercule servis hoc eum suis, non vobis, omnium gentium dominis, probaturum arbitror. Optimae leges igitur hac lege sine ulla suspicione tollentur. Idem lege sibi sua curationem petet: idem, majore parte populi suffragiis spoliata, comitia habebit quae volet, atque in iis se ipsum renuntiabit, et videlicet collegas suos, adscriptores legis agrariae non repudiabit, a quibus ei locus primus in indice et in praescriptione legis concessus est: ceteri fructus omnium rerum,

8. *notis hominibus*] Men who are known, but not favourably known; mercenary men, who will sell their votes and job for money; men who are common in all countries where there are popular elections.

Licinia] See De Imp. Cn. Pompeii, c. 19, note.

nam hoc quidem] This refers to 'se primum,' and 'alicujus tui commodi,' and generally to the violation of the two Leges. He says: "let others have the authority of the office; do you be content with the good opinion that you will get by your services; for this, indeed, to look after your interest in the matter, scarcely befits a free people, scarcely befits your high spirit and noble temper."

9. *adscriptores*] Those who approve of the Lex. Whether their names were really written or not to the Lex as promulgated, we do not know; but it seems that they were; for he adds "a quibus ei locus primus in indice et in praescriptione legis concessus est." This is the reading of E. F. P. The reading of G. is 'invidiae et in' in place of 'in indice et in.' The index is the title of the Lex, that which declares in general terms what it is (De Or. ii. 14). The Praescriptio is the heading of the Lex, as in the passage of Tacitus (Ann. i. 7): "Ne edictum quidem quo patres in curiam vocabat nisi tribunitiae potestatis praescriptione posuit." He represents Rullus and his men as bargaining together about the profit to be got by the Lex. His colleagues gave him the post of honour, but they all took care to insure their interests (communi cautione).

qui in spe legis hujus positi sunt, communi cautione atque aequa ex parte retinentur.

At videte hominis diligentiam, si aut Rullum cogitasse aut si Rullo potuisse in mentem venire arbitramini. Viderunt ii qui haec machinabantur, si vobis ex omni populo deligendi potestas esset data, quaecumque res esset in qua fides, integritas, virtus, auctoritas quaereretur, vos eam sine dubitatione ad Cn. Pompeium principem delaturos. Etenim quem unum ex cunctis delegissetis, ut eum omnibus omnium gentium bellis terra et mari praeponeretis, certe in decemviris faciendis, sive fides haberetur sive honos, et committi huic optime et ornari hunc justissime posse intelligebant. Itaque excipitur hac lege, non adolescentia, non legitimum aliquod impedimentum, non potestas, non magistratus ullus, aliis negotiis [ac legibus] impeditus; reus denique quo minus decemvir fieri possit non excipitur. Cn. Pompeius excipitur, ne cum P. Rullo, taceo de ceteris, decemvir fieri possit. Praesentem enim profiteri jubet, quod nulla alia in lege unquam fuit, ne in his quidem magistratibus quorum certus ordo est, ne, si accepta lex esset, illum sibi collegam ascriberetis, custodem ac vindicem cupiditatum. X. Hic, quoniam video vos hominis dignitate et contumelia legis esse commotos, renovabo illud quod initio dixi, regnum comparari, libertatem vestram hac lege funditus tolli. An vos aliter existimabatis, quum ad omnia vestra pauci homines cupiditatis oculos adjecissent, non eos in

Cn. Pompeius excipitur,] He was in Asia carrying on the war against Mithridates (De Imp. Cn. Pompeii, Introduction). He was not excepted in direct terms, but indirectly, because the Lex of Rullus required every man who was a candidate for the office of Decemvir to declare his intention in his own person. This is 'profiteri.' Cicero affirms that this was not required in the case of any of the regular 'magistratus' (quorum certus ordo est), such as the quaestorship and the intermediate ranks up to the consulship. The common word which expresses the fact of being a candidate is 'petere,' but 'profiteri' means nearly the same thing. But we know that in order to be a candidate a man must be at Rome and declare himself in the proper place a whole 'trinundinum' or seventeen days before the day of election. (Cic. Ad Div. xvi. 12.) A man might declare through his friends his intention to be a candidate, but still he must himself be present during the 'trinundinum.' It is difficult to see what Cicero means. The Lex of Rullus required something more to be done by a candidate in the matter of the Professio than was required in any of the elections for the ordinary 'magistratus.' Lauredanus explains it thus, and perhaps correctly; that a man was not forbidden to declare himself a candidate in his absence by means of his friends, though he was not considered a candidate, unless he was present at the Comitia: accordingly a man who declared himself a candidate in his absence, before the Comitia were held, might still be at Rome on the day of election; and Cicero says that the Servilia Lex did not allow this.

10. *cupiditatis oculos*] He says "videbant adjectum esse oculum hereditati," in the Verrine orations. Some of the critics cannot digest the expression 'cupiditatis oculos,' and they consider it more worthy of Appuleius than of Tullius. Still if Tullius did say it, we cannot help it, whether

primis id acturos, ut ex omni custodia vestrae libertatis, ex omni potestate, curatione, patrocinio vestrorum commodorum Cn. Pompeius depelleretur? Viderunt et vident, si per imprudentiam vestram, negligentiam meam, legem incognitam acceperitis, fore uti postea, cognitis insidiis, quum decemviros crearitis, tum vitiis omnibus et sceleribus legis Cn. Pompeii praesidium opponendum putetis. Et hoc parvum argumentum vobis erit a certis hominibus dominationem potestatemque omnium rerum quaeri, quum videatis eum quem custodem vestrae libertatis fore videant, expertem fieri dignitatis?

Cognoscite nunc quae potestas decemviris et quanta detur. Primum lege curiata decemviros ornat. Jam hoc inauditum et plane novum, ut ei curiata lege magistratus detur, cui nullis comitiis ante sit datus. Eam legem ab eo praetore qui sit primus factus ferri jubet. At quomodo? Ut ii decemviratum habeant quos plebs designaverit. Oblitus est nullos ab plebe designari. Et is orbem terrarum constringit novis legibus, qui, quod in secundo capite scriptum est, non meminit in tertio? Atque hic perspicuum est, quid juris a majoribus acceperitis, quid ab hoc tribuno plebis vobis relinquatur. XI. Majores de singulis magistratibus bis vos

it is worthy of him or not. 'Cupiditatis' is omitted by E., but it is written in the margin.—'crearitis:' 'creetis,' Baiter.

lege curiata] The Decemviri were to be elected by the Comitia Tributa. Then they were to receive the power and the honours which a Lex Curiata alone could give; and this power was the Imperium. In Cicero's time the Lex Curiata conferred the Imperium after the election of the 'magistratus;' and if the Imperium was refused, the 'magistratus' was still 'magistratus,' though he had not the Imperium, a term not limited to the Imperium militare as we might infer from Livy (v. 52) and from c. 12 of this oration, though the Imperium militare could not be exercised without a Lex Curiata. The Lex Curiata gave both this power and the power that the praetor had as praetor in Rome, which was also an Imperium. (See Dion Cassius, 39. c. 19.) It is true that a Lex Curiata was now a mere form, but the Romans kept forms; and without this form the Imperium could not be conferred.

11. *Majores de singulis*] This passage has caused great difficulty, and produced more notes than it is pleasant to read. Klotz has explained all that Cicero means to say: "Your ancestors allowed you to do that twice which this man does not allow you to do even once:" which Cicero says again in these words: "Ita, quum majores binis comitiis voluerint vos de singulis magistratibus judicare, hic homo popularis ne unam quidem populo comitiorum potestatem reliquit." It is hardly worth while to examine if what Cicero says is true: it is not true in the terms in which he expresses it. It is true enough for his rhetorical purpose.

We may express what he says thus. The Censores were elected by a Centuriata Lex: we know that this was so. The Patricii magistratus were elected by a Curiata Lex: he fixes no time here; nor does he say what he means by Patricii Magistratus. When he says 'iterum de eisdem judicabatur,' he does not clearly show whether 'eisdem' refers to 'censoribus' and 'Patriciis magistratibus' or to the last only; nor does he say how, by what Comitia this second 'judicium' was made. He then says (Nam, &c.) that the Romans now possess the Comitia centuriata and 'tributa;' that the Curiata are reduced to a form (auspiciorum caussa), which is supposed to mean that the solemn 'auspicia' under which the Imperium was conferred belonged to these Comitia.

The Comitia Curiata exercised the legis-

sententiam ferre voluerunt. Nam quum centuriata lex censoribus ferebatur, quum curiata ceteris patriciis magistratibus, tum iterum de eisdem judicabatur, ut esset reprehendendi potestas, si populum beneficii sui poeniteret. Nam quia prima illa comitia tenetis, centuriata et tributa, curiata tantum auspiciorum caussa remanserunt. Hic autem tribunus plebis, quia videbat potestatem neminem injussu populi aut plebis posse habere, curiatis ea comitiis, quae vos non sinitis, confirmavit; tributa, quae vestra erant, sustulit. Ita, quum majores binis comitiis voluerint vos de singulis magistratibus judicare, hic homo popularis ne unam quidem populo comitiorum potestatem reliquit. Sed videte hominis religionem et diligentiam. Vidit et perspexit sine curiata lege decemviros habere potestatem non posse, quoniam per novem tribus essent constituti. Jubet ferre legem de his curiatam: praetori imperat. Quam id ipsum absurde, nihil ad me attinet. Jubet enim, qui primus sit praetor factus, eum legem curiatam ferre: si is ferre non possit, qui postremus sit: ut aut lusisse in tantis rebus, aut profecto nescio quid spectasse videatur. Verum hoc, quod est aut ita perversum ut ridiculum, aut ita malitiosum ut obscurum sit, relinquamus: ad religionem hominis revertamur. Videt sine lege curiata nihil agi per decemviros posse. Quid postea, si ea lata non erit? Attendite ingenium. TUM II DECEMVIRI, inquit, EODEM JURE SINT, QUO QUI OPTIMA LEGE. Si hoc fieri potest ut in hac civitate, quae longe jure libertatis ceteris civitatibus antecellit, quisquam nullis comitiis imperium aut potestatem assequi possit,

lative power in the earliest periods of Roman history. When this power was transferred to the Comitia centuriata, the Curiata confirmed the Leges which were enacted in the Centuriata; and they also confirmed the elections made in the Centuriata. This confirmation of elections ceased in B. C. 287 by virtue of the Lex Maenia. In respect to the Comitia Tributa also the confirmation of the Curiata ceased perhaps after the Lex of Publilius Philo; at any rate after the Lex Hortensia, B. C. 287 (Gaius, i. 3). We now see all that Cicero could affirm, and we see in what a confused way he has said it.

It is not clear what 'prima' means in the words 'prima illa comitia:' at least I cannot explain it, unless it means that you maintain or keep (in the sense of 'retinetis') those Comitia as first, or chief, namely, the Centuriata et Tributa, and leave the second, the inferior, the merely formal part to the Curiata. But in old time it was different; the Curiata had the first place and the others held the second. In this passage I have followed E. Baiter reads or rather writes, taking Cicero's place, 'Nunc, Quirites, illa prima comitia:' but this does not diminish the difficulty. Baiter reads 'curiatis eam comitiis, quae vos non initis,' which is the conjecture of Lauredanus. I follow E. F. A.

quoniam per novem] Because an election by nine 'tribus' only, which is a majority of seventeen, would not be a proper election by the Comitia Tributa. The Lex of Rullus required a praetor to propose the Lex Curiata, because a tribune could not do it, for a tribune could not take the Auspicia.

eodem jure—qui, &c.] This is a usual Roman formula which expresses that the condition to which it refers is as complete as it can be. 'Optimo jure civis' is a complete Roman citizen, one who has the 'suffragium et honores.' There are some other remarks on 'optimo jure' (De Leg. Agr. iii. 2).

quid attinet tertio capite legem curiatam ferre jubere, quum quarto permittas ut sine lege curiata idem juris habeant quod haberent, si optima lege a populo essent creati? Reges constituuntur, non decemviri, Quirites, itaque ab his initiis [fundamentisque] nascuntur, ut non modo quum gerere coeperint, sed etiam quum constituentur, omne vestrum jus, potestas, libertasque tollatur. XII. At videte quam diligenter retineat jus tribuniciae potestatis. Consulibus legem curiatam ferentibus a tribunis plebis saepe est intercessum: neque tamen nos id querimur, esse hanc tribunorum plebis potestatem; tantum modo si quis ea potestate temere est usus existimamus: hic tribunus plebis lege curiata quam praetor ferat adimit intercedendi potestatem. Atque hoc quum in eo reprehendendum est, quod per tribunum plebis tribunicia potestas minuitur, tum in eo deridendum, quod consuli, si legem curiatam non habet, attingere rem militarem non licet; huic, cui vetat intercedi, potestatem, etiamsi intercessum sit, tamen eandem constituit quam si lata esset lex, ut non intelligam quare aut hic vetet intercedere, aut quemquam intercessurum putet; quum intercessio stultitiam intercessoris significatura sit, non rem impeditura.

Sint igitur decemviri neque veris comitiis, hoc est populi suffragiis, neque illis ad speciem atque ad usurpationem vetustatis per xxx lictores auspiciorum caussa adumbratis constituti. Videte nunc eos qui a vobis nihil potestatis acceperint, quanto majoribus ornamentis afficiat quam omnes nos affecti sumus, quibus vos amplissimas potestates dedistis. Jubet auspicia coloniarum deducen-

12. *existimamus.*] Lambinus has correctly explained this word. It is the same as 'judicamus,' 'censemus,' 'statuimus,' Pantagathus proposed the monstrous emendation 'exaestuamus;' and Halm, 'exagitamus.'

neque veris] They would not be real Comitia, because seventeen 'tribus' only would elect the Decemviri: nor would the form of Curiata Comitia be observed to keep up the practice of antiquity (ad usurpationem vetustatis); the thirty 'lictores curiati' would not appear. The old Comitia Curiata were summoned by 'lictores' each Curia by a lictor (Gellius, xv. 27, as it seems); and the proceedings were commenced with the solemn Auspicia in the presence of three augurs. The thirty men still showed themselves: they were the shadow of a substance. The augurs were there too, ready sometimes to swear for a bribe that a Lex Curiata was passed which was not passed. Cicero tells us a story about this in his letters (Ad Att. iv. 18).

auspicia] This is the MSS. reading. Baiter puts it thus [auspicia], and writes 'habere pullarios. EODEM,' &c. I have followed Mommsen. 'Auspicia' were taken by observing the flight of birds, by their voices, and by the movement and action (tripudium) of fowls (pulli) which were kept in cages by a 'pullarius.' If they did not come briskly out of their cage when it was opened and did not peck well at their food, the sign was bad. A prudent 'pullarius' could generally manage his business; or he could lie, if it was necessary (Livy, x. 40). The history of the consul L. Papirius is a signal instance of the way in which the Romans made religion serve their purposes (Livy, x. 40). Claudius Pulcher, who threw the fowls into the sea, because they would not peck, lost a battle, and was disgraced for it at home (Cicero, De Divin. i. 16; ii. 8).

darum caussa decemviros habere: PULLARIOS EODEM JURE, inquit, QUO HABUERUNT III VIRI LEGE SEMPRONIA. Audes etiam, Rulle, mentionem facere legis Semproniae, nec te ea lex ipsa commonet III viros illos XXXV tribuum suffragio creatos esse? Et quum tu a Ti. Gracchi aequitate ac pudore longissime remotus sis, id quod dissimillima ratione factum sit eodem jure putas esse oportere? XIII. Dat praeterea potestatem, verbo praetoriam, re vera regiam: definit in quinquennium, facit sempiternam. Tantis enim confirmat opibus et copiis ut invitis eripi nullo modo possit. Deinde ornat apparitoribus, scribis librariis, praeconibus, architectis; praeterea mulis, tabernaculis, centuriis, supellectili; sumptum haurit ex aerario, suppeditat a sociis; janitores ex equestri loco ducentos in annos singulos stipatores corporis constituit, eosdem ministros et satellites potestatis.

Formam adhuc habetis, Quirites, et speciem ipsam tyrannorum: insignia videtis potestatis, nondum ipsam potestatem. Dixerit enim fortasse quispiam: Quid me ista laedunt, scriba, lictor, praeco, pullarius? Omnia sunt haec hujusmodi, Quirites, ut ea qui habeat sine vestris suffragiis, aut rex non ferendus aut privatus furiosus esse videatur. Perspicite quanta potestas permittatur; non privatorum insaniam, sed intolerantiam regum esse dicetis. Primum permittitur infinita potestas innumerabilis pecuniae conficiendae de vestris vectigalibus non fruendis, sed alienandis: deinde orbis terrarum gentiumque omnium datur cognitio sine consilio, poena sine

Those who are curious may read Machiavelli's comment on this (Discorsi, &c., i. 14).

13. *scribis librariis,*] So Baiter writes, as Ursini recommends. He supposes 'scribae librarii' to be one set of persons; and he says that he has observed it so written on ancient monuments. If two sets of persons are meant, the 'librarii' may be mere clerks or copyists: the 'scribae' were of a higher class (Vol. I. Verr. ii. 3. c. 79).—'centuriis:' there is no meaning in this word. Turnebus proposed to read 'tentoriis.' He says that 'tabernacula' were made of planks, and 'tentoria' were made of skins. Pantagathus reads 'cantheriis.'—'janitores:' E. F. A. Baiter prints 'finitores,' the conjecture of Ant. Augustinus, which I do not accept. It is very plain, if what follows is not corrupt, that Cicero is not speaking of 'finitores' or land surveyors. He might if he chose give to these two hundred 'equites' an odious name; he might call the ten 'equites' who were to be attached to each Decemviri, 'janitores,' their door keepers; 'stipatores corporis,' their body guard. Graevius understood this right: these men were a kind of Praetoria cohors, and Cicero gives them just such opprobrious names as he pleases. Klotz, who accepts 'finitores,' still thinks that they are meant, even if 'janitores' should be the right reading; and the words 'cum illa delecta finitorum juventute' (c. 17) seem to be some evidence that he is right. Still it is doubtful.

non fruendis,] "Not from letting the 'vectigalia,' but by selling the lands in respect of which the 'vectigalia' are due." 'Alienare,' and 'abalienare,' signify to sell generally; but there is a special definition: "Abalienatio est ejus rei quae mancipi est aut traditio alteri nexu, aut in jure cessio inter quos ea jure civili fieri possunt." (Cicero, Top. 5; Gaius, i. 119; Verr. ii. 4. c. 60.)

cognitio, &c.] A judicial inquiry without a body of 'judices' (consilium), a penalty without an appeal (to the people), a punish-

provocatione, animadversio sine auxilio. Judicare per quinquennium vel de consulibus vel de ipsis tribunis plebis poterunt. De illis interea nemo judicabit. Magistratus iis petere licebit: caussam dicere non licebit. Emere agros a quibus volent vel quos volent quam volent magno poterunt; colonias deducere novas, renovare veteres, totam Italiam suis coloniis ut complere liceat permittitur: omnes provincias obeundi, liberos populos agris mulctandi, regnorum dandorum summa potestas datur quum velint: Romae esse, quum commodum sit: quacumque velint, summo cum imperio judicioque rerum omnium vagari ut liceat conceditur: interea dissolvant judicia publica; e consiliis abducant quos velint; singuli de maximis rebus judicent; quaestori permittant; finitorem mittant; ratum sit quod finitor uni illi a quo missus erit renuntiaverit. XIV. Verbum mihi deest, Quirites, quum ego hanc potestatem regiam appello, sed profecto major est quaedam. Nullum enim regnum fuit umquam, quod non se, si minus jure aliquo, at regionibus tamen certis contineret. Hoc vero infinitum est, quo et regna omnia, et vestrum imperium, quod latissime patet, et ea quae partim libera a vobis, partim etiam ignorata vobis sunt, permissu legis continentur.

Datur igitur eis primum ut liceat ea vendere omnia, de quibus vendendis senatusconsulta facta sunt M. Tullio Cn. Cornelio coss. aut postea. Cur hoc est tam obscurum atque caecum? Quid, ista omnia, de quibus senatus censuit, nominatim in lege perscribi nonne potuerunt? Duae sunt hujus obscuritatis caussae, Quirites: una pudoris, si quis pudor esse potest in tam insigni impudentia; altera sceleris. Nam neque ea quae senatus nominatim vendenda censuit, audet appellare: sunt enim loca publica Urbis, sunt sacella, quae post restitutam tribuniciam potestatem nemo attigit, quae majores in Urbe partim periculi perfugia esse voluerunt. Haec lege tribunicia decemviri vendent. Accedet eo mons Gaurus: accedent

ment without the intercession (auxilium) of the tribune.

caussam dicere] It is not a privilege which will be suspended, but a liability to which they will not be exposed. They cannot be brought to trial (caussam dicere), because they will be in office and absent from Rome on public business.

finitor] He is the surveyor: "finitores dicebantur quos nunc agri mensores dicimus, dicti quod fines dividerent" (Nonius), who quotes in proof of what he says the Prologus to the Poenulus of Plautus (v. 49).

"Ejus nunc regiones, limites, confinia
Determinabo, ejus rei ego sum factus finitor."

(Rudorff, Gromatische Instit. p. 321.)

14. *M. Tullio,*] L. Cornelius Sulla was then Dictator B.C. 81, the year in which Cicero delivered his speech Pro P. Quintio.

sacella,] 'Sacred places,' where people could seek sanctuary. 'Quae — partim' means 'part of which.' Tacitus (Ann. iii. 60) has some remarks on the Greek Asyla.

Gaurus:] Near Puteoli, on which good wine was grown. It is one of the hills of

salicta ad Minturnas: adjungetur etiam illa via vendibilis Herculanea, multarum deliciarum et magnae pecuniae: permulta alia, quae senatus propter angustias aerarii vendenda censuit, consules propter invidiam non vendiderunt. Verum haec fortasse propter pudorem in lege reticentur. Sed illud magis est cavendum et pertimescendum, quod audaciae decemvirali corrumpendarum tabularum publicarum fingendorumque senatusconsultorum, quae facta numquam sunt, quum ex eo numero qui per eos annos consules fuerunt multi mortui sint, magna permittitur potestas. Nisi forte nihil est aequum nos de eorum audacia suspicari, quorum cupiditati nimium angustus orbis terrarum esse videatur.

XV. Habetis unum venditionis genus, quod magnum videri vobis intelligo: sed attendite animos ad ea quae consequuntur; hunc quasi gradum quendam atque aditum ad cetera jactum intelligetis. QUI AGRI, QUAE LOCA, AEDIFICIA. Quid est praeterea? multa in mancipiis, in pecore, auro, argento, ebore, veste, supellectili, ceteris rebus. Quid dicam? invidiosum putasset hoc fore, si omnia nominasset? Non metuit invidiam. Quid ergo? longum putavit, et timuit ne quid praeteriret: adscripsit, ALIUDVE QUID qua brevitate rem nullam esse exceptam videtis. Quidquid ergo sit extra Italiam, quod publicum populi Romani factum sit, L. Sulla Q. Pompeio consulibus aut postea, id decemviros jubet vendere. Hoc capite, Quirites, omnes gentes, nationes, provincias, regna, decemvirum ditioni, judicio, potestatique permissa et condonata esse dico. Primum hoc quaero enim, qui tandem locus

the volcanic tract between Neapolis and Cumae. The osier beds of Minturnae were in the low lands near the mouth of the Liris, where C. Marius once hid himself. (Plutarch, Marius, c. 37.)

Herculanea,] If this adjective is right, and no MSS. variation is mentioned, the place was sometimes named Herculanum as well as Herculaneum. This is the city at the foot of Vesuvius which was destroyed A. D. 79 by an eruption of the mountain. The site is Resina, between Naples and Pompeii. The 'via' may be the road along the coast of the bay, which was fit for building villas on. Of course he does not mean the road only, but land bordering on it.

cavendum] The reading of G. Baiter keeps the reading 'credendum.' Lambinus conjectured 'cavendum;' and Gulielmius, 'verendum.'

corrumpendarum, &c.] It seems strange that this should have been possible at that time, or that Cicero should say that it was possible to alter the public records and to forge Senatusconsulta, because many of the consuls between the date of M. Tullius and Cn. Cornelius and the present time were dead. The Senatusconsulta were kept safe: "Institutum etiam ab iisdem consulibus, ut senatusconsulta in aedem Cereris ad aediles plebis deferrentur, quae ante arbitrio consulum supprimebantur vitiabanturque" (Liv. iii. 55). If any were forged, the names of those who were present when they were drawn up (qui scribendo adfuerunt) must be forged. Cic. Ad Div. viii. 8: "Senatusconsultum, quod tibi misi, factum est auctoritatesque perscriptae;" the Senatusconsultum begins thus: "S. C. auctoritas. Pridie Kal. Octob. in aede Apollinis scrib. affuerunt L. Domitius Cn. F." &c.

15. *jactum*] 'Factum' which is printed in some editions is a conjecture of Lauredanus.—'putasset:' Puteanus wrote 'putasse,' which Baiter has; and it may be right.—'enim, qui:' 'ecqui,' Baiter.

usquam sit quem non possint decemviri dicere publicum populi Romani esse factum. Nam quum idem possit judicare qui dixerit, quid est quod non liceat ei dicere, cui liceat eidem judicare? Commodum erit Pergamum, Smyrnam, Tralles, Ephesum, Miletum, Cyzicum, totam denique Asiam, quae post L. Sullam Q. Pompeium consules recuperata sit, populi Romani factam esse dicere. Utrum oratio ad ejus rei disputationem deerit, an, quum idem et disseret et judicabit, impelli non poterit ut falsum judicet? an, si condemnare Asiam nolet, terrorem damnationis et minas non quanti volet aestimabit? Quid, quod disputari contra nullo pacto potest, quoniam statutum a vobis est et judicatum, quam hereditatem jam crevimus, regnum Bithyniae, quod certe publicum est populi Romani factum, numquid caussae est quin omnes agros, urbes, stagna, portus, totam denique Bithyniam decemviri vendituri sint? XVI. Quid Mitylenae, quae certe vestrae, Quirites, belli lege ac victoriae jure factae sunt; urbs et natura et situ et descriptione aedificiorum et pulchritudine in primis nobilis, agri jucundi et fertiles? Nempe eodem capite inclusi continentur. Quid Alexandria cunctaque Aegyptus? ut occulte latet! ut recondita est! ut furtim tota decemviris traditur! Quis enim vestrum hoc ignorat, dici illud regnum testamento regis Alexae populi Romani esse factum? Hic

quam hereditatem] 'Quoniam hereditatem,' Ernesti, Baiter; for which there is no authority nor reason, except it be in the reading of E.,—'*qm* superscript. litt. *u*.'

stagna,] E. F. P. There is also a reading 'stativa,' and it may be right, for 'stativa' is not 'munita loca,' as Manutius supposes. Graevius defends 'stativa,' and maintains that it means the same as 'stativae aquae' (Varro, Apud Non. v. Putei), which is explained by 'lacus et stagna, et putei et maria.' Cicero means still waters, places which contained fish, and were valuable on that account. Such were the ponds near Ephesus.

Nicomedes left his kingdom of Bithynia to the Romans, and they had taken possession of the testamentary gift.

16. *Mitylenae,*] This city held out for Mithridates, and gave up to him some Romans. M. Thermus stormed the town and destroyed it (Livy, Ep. 89). C. Julius Caesar, then a very young man, was present. But the town was not entirely destroyed, if Cicero speaks the truth here.

Alexae] E. F. P. Alexander is meant. See De Leg. Agr. i. 1.—'eum qui regnum:' this was Ptolemaeus Auletes, a bastard son of Ptolemaeus Lathyrus, as it was said. This L. Philippus is supposed to be the man who was consul B. C. 91. Baiter has pointed the sentence thus: "Haec L. Philippum—memoria teneo; eum, qui—esse inter omnes fere video convenire." He has not perceived, it seems, that there is no meaning in this. When Cicero says "Haec—teneo," he introduces us to what Philippus said, which was this: "eum qui," &c.; and consequently 'video' spoils the sense. Gruter saw that there was an 'ulcus' here, for he could not perceive how the words 'eum qui regnum' cohere with what precedes. Graevius saw that 'inter omnes' depended on what precedes; for what Philippus said, as he observes, was this: that nearly every body agreed that the present king of Egypt was neither of the royal stock nor had the spirit of a king. Accordingly he concludes that 'video' has been stuck in by somebody who did not see the meaning. But I infer that all the MSS. have it. However, Graevius saw the meaning. If we do not accept his conjecture about 'video,' he proposes another: he supposes that the word 'id' has been dropped before 'inter.' That is possible too. I have made 'inter omnes,' &c., a distinct affirmation of Cicero, and so the text remains unchanged.

ego consul populi Romani non modo nihil judico, sed ne quid sentiam quidem profero; magna enim mihi res non modo ad statuendum, sed etiam ad dicendum videtur esse. Video qui testamentum factum esse confirmet; auctoritatem senatus exstare hereditatis aditae sentio, tum quando, Alexa mortuo, legatos Tyrum misimus, qui ab illo pecuniam depositam nostris recuperarent. Haec L. Philippum saepe in senatu confirmasse memoria teneo, eum qui regnum illud teneat hoc tempore neque genere neque animo regio esse; inter omnes fere video convenire. Dicitur contra, nullum esse testamentum; non oportere populum Romanum omnium regnorum appetentem videri; demigraturos in illa loca nostros homines propter agrorum bonitatem et omnium rerum copiam. Hac tanta de re P. Rullus cum [ceteris] decemviris, collegis suis, judicabit, et verum judicabit? Nam utrumque ita magnum est ut nullo modo neque concedendum neque ferendum sit. Volet esse popularis: populo Romano adjudicabit. Ergo idem ex sua lege vendet Alexandriam, vendet Aegyptum: urbis copiosissimae pulcherrimorumque agrorum judex, arbiter, dominus, rex denique opulentissimi regni reperietur. Non sumet sibi tantum, non appetet. Judicabit Alexandriam regis esse, a populo Romano abjudicabit.

XVII. Primum [tum] populi Romani hereditatem decemviri judicent, quum vos volueritis de privatis hereditatibus centumviros judicare? Deinde quis aget caussam populi Romani? Ubi res ista agetur? Qui sunt isti decemviri, quos perspiciamus regnum Alexandriae Ptolemaeo gratis adjudicaturos? Quod si Alexandria petebatur, cur non eosdem cursus hoc tempore, quos L. Cotta L.

We thus get the affirmation of Philippus, who in Baiter's text affirms and yet says nothing; for according to his punctuation it is Cicero who says what people think, and Philippus is quoted as saying something, and yet we are not told what it was. I hardly need to observe that 'Haec' does not refer to the preceding sentence. I am inclined to think that the text is right; and that it is only the common punctuation that is wrong.

verum judicabit?] 'Utrum,' Puteanus, followed by Baiter. The change is small from 'verum' to 'utrum;' but 'verum' is intelligible: "and will he judge right, or decide as he ought to do?"

17. *centumviros*] What a question to ask: "shall ten men decide about a claim of the Roman people to a testamentary donation, when you have chosen to have a hundred to decide on disputes about 'hereditates' between private persons?" Ten would be more honest than a hundred. The Centumviri formed a court at Rome (Vol. I. Judicia). See Pro Caecina, c. 18.—'Primum (tum):' E. F. P. A. I see no meaning in 'tum' here.

cur non eosdem] "Why have they not run the same straight course that was followed in the time of Cotta and Torquatus? Why have they not gone straight to their object, as the commissioners did then?" There is a story in Plutarch (Crassus, c. 13) that in B. C. 65, when Crassus was Censor, "he designed a shameful and violent measure, to make Egypt tributary to the Romans, and that Catulus (his colleague) opposed him vigorously, on which a difference arising

Torquato consulibus cucurrerunt, cur non aperte ut antea, cur non item, ut quum directo et palam regionem illam petierunt? an quietis iis qui per cursum rectum regnum tenere non potuerunt, nunc taetris tenebris et caligine se Alexandriam perventuros arbitrati sunt? Atque illud circumspicite vestris mentibus una, Quirites. Legatos nostros, homines auctoritate tenui, qui rerum privatarum caussa legationes liberas obeunt, tamen exterae nationes ferre vix possunt. Grave est enim nomen imperii, atque id etiam in levi persona pertimescitur, propterea quod vestro, non suo nomine, quum hinc egressi sunt, abutuntur. Quid censetis, quum isti decemviri cum imperio, cum fascibus, cum illa delecta finitorum juventute per totum orbem terrarum vagabuntur, quo tandem animo, quo metu, quo periculo miseras nationes futuras? Est in imperio terror; patientur. Est in adventu sumptus; ferent. Imperabitur aliquid muneris; non recusabunt. Illud vero quantum est, Quirites, quum is decemvir qui aliquam in urbem aut exspectatus ut hospes, aut repente ut dominus, venerit, illum ipsum locum, quo venerit, illam ipsam sedem hospitalem, in quam erit deductus, publicam populi Romani esse dicet? Quanta calamitas populi, si dixerit; quantus ipsi quaestus, si negarit? Atque iidem, qui haec appetunt, queri nonnumquam solent omnes terras Cn. Pompeio atque omnia maria esse permissa. Simile vero est multa committi et condonari omnia; labori et negotio praeponi an praedae et quaestui mitti ad socios liberandos an ad opprimendos? Denique si qui est honos singularis, nihilne interest utrum populus Romanus eum cui velit deferat, an is impudenter populo Romano per legis fraudem surripiatur?

XVIII. Intellexistis quot res et quantas decemviri legis per-

between them, they voluntarily laid down their office." This was the year of Cotta's and Torquatus' consulship.

an quietis iis] The reading 'An, Quirites, ii,' is the correction of Manutius. Baiter has 'an qui etesiis, qui,' &c., the correction of Gulielmius, which Gruter calls 'illustris,' and Graevius calls 'audax,' and any body may call 'absurda,' if he likes. Baiter, who often shows little judgment in such matters, accepts it, and quotes Cicero (De Nat. Deor. ii. § 131): "ventos etesias, quorum flatu nimii temperantur calores; ab iisdem etiam maritimi cursus celeres et certi diriguntur." But this proves nothing except that etesian winds are good for the mariner while they blow, if he is going with them. Graevius explains it simply: "while those are quiet who formerly were going to Egypt openly, and had got a Senatusconsultum which gave them authority."

legationes liberas] See Index.—'in levi persona:' when the character which the man sustains is trifling, yet he gets importance because he has the authority of the State. See Pro Caecina, c. 5; and 'personam hanc' in the next chapter of this oration.

omnes terras, &c.] By the Leges Gabinia and Maniliae. See the Introduction to the oration De Imperio Cn. Pompeii.

labori et negotio—an] This seems irregular; for if it is a continuation of 'Simile vero,' &c., we should have 'et praedae,' &c., but that would be confused; and the confusion is avoided by separating by 'an' the things which are opposed.—'impudenter:' 'imprudente,' Lauredanus, Baiter.

missu vendituri sint. Non est satis. Quum se sociorum, quum exterarum nationum, quum regum sanguine implerint, incidant nervos populi Romani, adhibeant manus vectigalibus vestris, irrumpant in aerarium. Sequitur enim caput, quo capite ne permittit quidem, si forte desit pecunia, quae tanta ex superioribus recipi potest ut deesse non debeat, sed plane, quasi ea res vobis saluti futura sit, ita cogit atque imperat ut decemviri vestra vectigalia vendant nominatim. Quam tu mihi ex ordine recita de legis scripto populi Romani auctionem; quam mehercule ego praeconi huic ipsi luctuosam et acerbam praedicationem futuram puto.—Ut in suis rebus, ita in re publica luxuriosus est nepos, qui prius silvas vendat quam vineas. Italiam percensuisti: perge in Siciliam.—Nihil est in hac provincia quod aut in oppidis aut in agris majores nostri proprium nobis reliquerunt, quin id venire jubeat. Quod partum recenti victoria majores vobis in sociorum urbibus ac finibus et vinculum pacis et monumentum belli reliquerunt, id vos ab illis acceptum hoc auctore vendetis?

Hic mihi parumper mentes vestras, Quirites, commovere videor, dum patefacio vobis, quas isti penitus abstrusas insidias se posuisse arbitrantur contra Cn. Pompeii dignitatem. Et mihi, quaeso, ignoscite, si appello talem virum saepius. Vos mihi praetori biennio ante, Quirites, hoc eodem in loco personam hanc imposuistis, ut, quibuscumque rebus possem, illius absentis dignitatem vobiscum una tuerer. Feci adhuc quae potui, neque familiaritate illius adductus, nec spe honoris atque amplissimae dignitatis; quam ego, etsi libente illo, tamen absente illo, per vos consecutus sum. Quamobrem quum intelligam totam hanc fere legem ad illius opes evertendas tamquam machinam comparari, et resistam consiliis hominum, et perficiam profecto quod ego video ut id vos universi non solum videre verum etiam tenere possitis. XIX. Jubet venire quae Attalensium, quae Phaselitum, quae Olympenorum fuerint, agrumque Agerensem et Oroandicum et Gedusanum. Haec P. Servilii imperio et victoria, clarissimi viri, vestra facta

18. *cogit atque*] 'Cogitat atque,' E. F. A. The correction was made by N. Angelius.—'vectigalia vendant:' this does not mean to let the 'vectigalia,' but to sell the land from which the 'vectigalia' came, to sell the 'agri vectigales.' 'Vectigalia vendere' is an ambiguous expression (Vol. I. Verr. ii. 3. c. 6, notes).

silvas—quam] We must supply what the 'praeco' is supposed to have read: for Cicero says, 'Italiam percensuisti. Perge,' &c. The 'praeco' had read the part of the Lex in which the Silva Scantia is marked for sale.

biennio ante,] When he delivered the oration De Cn. Pompeii Imperio.

19. *P. Servilii*] The campaigns of P. Servilius Isauricus (B. C. 78) were in the southern part of Asia Minor, in Pamphylia, and the neighbouring countries. He took Olympus and Phaselis, both of which were in Lycia, and he fought with the Isauri in

sunt. Adjungit agros Bithyniae regios, quibus nunc publicani fruuntur: deinde Attalicos agros in Cherroneso: in Macedonia, qui regis Philippi sive Persae fuerunt, qui item a censoribus locati sunt, [et] certissimum vectigal. Adscribit idem auctioni Corinthios agros, opimos et fertiles, et Cyrenenses, qui Apionis fuerunt; et agros in Hispania propter Karthaginem novam, et in Africa ipsam veterem Karthaginem vendit: quam videlicet P. Africanus non propter religionem sedium illarum ac vetustatis de consilii sententia consecravit, nec ut ipse locus eorum, qui cum hac urbe de imperio certarunt, vestigia calamitatis ostenderet, sed non fuit tam diligens quam est Rullus; aut fortasse emptorem ei loco reperire non potuit. Verum inter hos agros regios, captos veteribus bellis virtute summorum imperatorum, adjungit regios agros Mithridatis, qui in Paphlagonia, qui in Ponto, qui in Cappadocia fuerunt, ut eos decemviri vendant. Itane vero—non legibus datis, non auditis verbis imperatoris, nondum denique bello confecto, quum rex Mithridates, amisso exercitu, regno expulsus, tamen in ultimis terris aliquid etiam nunc moliatur, atque ab invicta Cn. Pompeii manu Maeote et illis paludibus et itinerum angustiis atque

the interior. See Vol. 1. Verr. ii. 4. c. 10, Phaselis. Oroanda was in Pisidia (Ptol. v. 4. § 12). I know nothing of the Ager Agerensis and Gedusanus. Perhaps 'Agerensis' is corrupt, and it has been suggested that it ought to be Sagalassensis. Here Cicero speaks clearly of the land being sold; and Graevius makes a good remark. "Some find a difficulty here, who suppose that the 'vectigalia' are sold, not the lands, because Cicero said a little before, 'adhibeant manus vectigalibus nostris,' as if the 'vectigal' was not sold, when that is sold from which the 'vectigal' comes."

in Cherroneso:] These were the domains of the king of Pergamum, which he had acquired in the Thracian Chersonese, and which became the property of the Roman people when the last Attalus bequeathed to them his kingdom. The private property of the kings of Pergamum was very great, and it had become a kind of proverb (Horace, Carm. i. 1. Attalicis conditionibus).—'et certissimum:' some adjective has been omitted before 'et,' or 'et' ought to be erased.—'idem auct.:' 'eidem auct.' Baiter.

Apionis] This Ptolemaeus Apion was a Greek king of Cyrene, who left his states B.C. 96 to the Romans (Liv. Ep. 70; Obsequens, c. 109). The Senate declared the cities of his kingdom to be 'liberae:' but they took possession of the royal domains. These domains of Ptolemaeus are mentioned by Hyginus (p. 122, ed. Lachmann): "Neque hoc praetermittam quod in provincia Cyrenensium conperi: in qua agri sunt regii, id est illi quos Ptolemeus rex populo Romano reliquit."

de consilii sententia] "Upon the advice or with the concurrence of his 'consilium;'" a body of ten men generally who acted as commissioners with the general in reducing a conquered country to the form of a province and settling its constitution. The phrase is sometimes 'ex consilia sententia' (Livy, 45. c. 29). Cicero says 'non legibus datis, non auditis verbis imperatoris:' Rullus had not waited till Pompeius had in the usual way declared the terms on which the conquered people should submit. These terms were called 'leges.' Pompeius had no 'consilium;' he did as he pleased: "cujus judicium legumque datio' (c. 22).

Maeote] This is the MSS. reading, or it is what is intended in some of them where the word is corrupt. The reading in some of the printed books is 'Maeotide.' It is the water now called the Sea of Azoff. Mithridates after being defeated by Pompeius fled to the shores of the Maeotis, and occupied Panticapaeum (Kertsch), which Appian (Mithrid. c. 107) correctly describes as a trading town in Europe, at the outlet of the Pontus. Here the king was making

altitudine montium defendatur; quum imperator in bello versetur, in locis autem illis etiam nunc belli nomen reliquum sit; eos agros, quorum adhuc penes Cn. Pompeium omne judicium et potestas more majorum debet esse, viri decem vendent? Et, credo, P. Rullus—is enim sic se gerit ut sibi jam decemvir designatus esse videatur—ad eam auctionem potissimum proficiscetur. XX. Is videlicet antequam veniat in Pontum, litteras ad Cn. Pompeium mittet; quarum ego jam exemplum ab istis compositum esse arbitror: P. SERVILIUS RULLUS, TRIBUNUS PLEBIS, DECEMVIR, S. D. CN. POMPEIO, CN. F. Non credo ascripturum esse, MAGNO; non enim videtur id quod imminuere lege conatur concessurus verbo. TE VOLO CURARE, UT MIHI SINOPAE PRAESTO SIS AUXILIUMQUE ADDUCAS, DUM EOS AGROS QUOS TUO LABORE CEPISTI EGO MEA LEGE VENDAM. An Pompeium non adhibebit, in ejus provincia vendet manubias imperatoris? Ponite ante oculos vobis Rullum, in Ponto, inter nostra atque hostium castra hasta posita cum suis formosis finitoribus auctionantem. Neque in hoc solum inest contumelia, quae vehementer et insignis est et nova, ut ulla res parta bello, nondum legibus datis, etiam tum imperatore bellum administrante, non modo venierit, verum locata sit. Plus spectant

great preparation for another contest with the Romans (in ultimis terris). He was taking both free men and slaves to form a new army; making armour, weapons, and engines of war. He spared nothing that he wanted, and took even the beasts that were used for the plough. But the people of Theodosia (Kaffa) and other places rose against him, and his plans were spoiled. He is said to have entertained the desperate intention of making his way from the Crimea to the country of the Galli, and with them invading Italy from the north as Hannibal had done. But the great king's resources were all gone. There was treachery in his own family. He saw that he must die, and a Gaul, who was with him, at the king's earnest entreaty, did him the last service by plunging a sword into his body. Pharnaces, the son, sent his father's corpse to Sinope, where it was placed in the royal sepulchres with kingly pomp by the order of Pompeius.

20. *magno;*] The cognomen of Pompeius. Plutarch (Pomp. c. 13) tells two different stories about the origin of this Cognomen. One story was that Sulla saluted him with this title. "The word Magnus," says Plutarch, "means Great."

Sinopae] E. Sinope, F. A.—'An—adhibebit:' he says—'will he write as I have said, or will he not even invite Pompeius?' In this passage 'manubiae' comprehends even the lands taken from the enemy. He adds 'cum suis formosis' (c. 17), meaning the young men who would be glad to have an office under the Decemviri. It is easy to understand what he means; an odious imputation which the orator unworthily casts on his opponents, as he did in the Verrine orations. These 'formosi finitores' may be the 'janitores' of a former chapter.

verum locata sit] The 'etiam' which is often printed between 'verum' and 'locata sit' is not in the MSS., and therefore it should not be in the printed books. It is not wanted. Turnebus makes a mistake here. He says that 'non modo' is for 'non modo non;' and adds 'ut alias non raro.' It appears then that the French used to translate this wrong, as we should do, if we said 'not only not sold, but even let.' It means 'not so much as sold, but let:' or 'I do not say sold, but let.' There is shortly after an example where Cicero means to say 'not only,' but to add something: "cum innumerabili pecunia non solum aliis in locis vagari, verum etiam ad ipsius exercitum pervenire.' He says 'non solum,' not the only thing; this is not the entire thing: there is something to add. 'Modo' is a word that

homines certe quam contumeliam: sperant, si concessum sit inimicis Cn. Pompeii, cum imperio, cum judicio omnium rerum, cum infinita potestate, cum innumerabili pecunia non solum aliis in locis vagari, verum etiam ad ipsius exercitum pervenire, aliquid illi insidiarum fieri, aliquid de ejus exercitu, copiis, gloria detrahi posse. Putant, si quam spem in Cn. Pompeio exercitus habeat aut agrorum aut aliorum commodorum, hanc non habiturum, quum viderint earum rerum omnium potestatem ad decemviros esse translatam. Patior non moleste tam stultos esse qui haec sperent, tam impudentes qui haec conentur. Illud queror, tam me ab iis esse contemptum ut haec portenta me consule potissimum cogitarent.

Atque in omnibus his agris aedificiisque vendendis permittitur decemviris, ut vendant quibuscumque in locis videatur. O perturbatam rationem! o libidinem refrenandam! o consilia dissoluta atque perdita! XXI. Vectigalia locare nusquam licet, nisi in hac urbe, hoc ex loco, hac vestrum frequentia. Venire nostras res proprias et in perpetuum a nobis abalienari in Paphlagoniae tenebris atque in Cappadociae solitudine licebit? L. Sulla quum bona indemnatorum civium funesta illa sua auctione venderet, et se praedam suam diceret vendere, tamen ex hoc loco vendidit, nec quorum oculos offendebat, eorum ipsorum conspectum fugere ausus est. Decemviri vestra vectigalia non modo vobis arbitris, sed ne praecone quidem publico teste vendent?

Sequitur, OMNES AGROS EXTRA ITALIAM infinito ex tempore, non, ut antea, ab Sulla et Pompeio consulibus. Cognitio decemvirûm, privatus sit an publicus: eique agro pergrande vectigal imponitur. Hoc quantum judicium, quam intolerandum, quam regium sit, quem praeterit? posse quibuscumque locis velint, nulla disceptatione, nullo consilio, privata publicare, publica liberare? Excipitur hoc capite ager in Sicilia Recentoricus; quem ego excipi et propter hominum necessitudinem et propter aequitatem, Quirites,

limits: 'ad modum,' is to the full measure. There is a passage in c. 37, 'Non modo vos—verum etiam,' where we may translate 'non modo' by 'not only;' but we must not translate this passage as if it were 'non modo non.' However, 'not only' is not the best translation there. In fact 'not only' in English is ambiguous. See Vol. I. Excursus on Non modo.

refrenandam!] "*effrenatam*, nos; *refrenatam*, F. P.; *refrenandam*, ceteri." 'Nos' is Baiter.

21. *Vectigalia locare*] The 'vectigalia' were let at Rome, from the Rostra. But those of Sicily were let in the island (Vol. I. Verr. ii. 3. c. 6, and 64).

abalienari] E. F. G.: the rest have 'alienari.' See note on c. 13.—'non modo vobis arbitris:' the MSS. have 'non modo ne vobis quidem arbitris,' except one MS., which omits 'quidem.' Lauredanus corrected this passage.—'eique agro:' the correction of Madvig. The MSS. have 'sicque agro.'

ipse vehementer gaudeo. Sed quid haec impudentia? Qui agrum Recentoricum possident, vetustate possessionis se, non jure, misericordia senatus, non agri conditione defendunt. Nam illum agrum publicum esse fatentur: se moveri possessionibus, amicissimis sedibus ac diis penatibus, negant oportere. Ac si est privatus ager Recentoricus, quid eum excipis? sin autem publicus, quae est ista aequitas ceteros, etiamsi privati sint, permittere ut publici judicentur; hunc excipere nominatim, qui publicus esse fateatur? Ergo eorum ager excipitur qui apud Rullum alia ratione valuerunt: ceteri agri omnes qui ubique sunt, sine ullo delectu, sine populi Romani notione, sine judicio senatus decemviris addicentur. XXII. Atque etiam est alia superiore capite quo omnia veneunt quaestuosa exceptio, quae teget eos agros de quibus foedere cautum est. Audivit hanc rem non a me, sed ab aliis agitari saepe in senatu, nonnumquam ex hoc loco, possidere agros in ora maritima regem Hiempsalem, quos P. Africanus populo Romano adjudicarit, et tamen postea per C. Cottam consulem cautum esse foedere. Hoc quia vos foedus non jusseritis, veretur Hiempsal ut satis firmum sit et ratum. Quid, cujusmodi est illud? tollitur vestrum judicium: foedus totum excipitur: comprobatur. Quod minuit auctionem decemviralem laudo; quod regi amico cavet non reprehendo; quod non gratis fit indico. Volitat enim ante oculos istorum Juba regis filius, adolescens non minus bene nummatus quam bene capillatus.

Vix jam videtur locus esse qui tantos acervos pecuniae capiat.

Sed quid haec impudentia?] Madvig, who is followed by Baiter, writes 'sed quae est haec impudentia?'

agrum Recentoricum] This land was the property of the Roman State, but it was occupied by the cultivators, who had long been in possession, they and their fathers. They paid the State for the use of the land: they knew it was not their own, but after long enjoyment they would think it hard to be ejected.

amicissimis] 'Antiquissimis,' Lauredanus, who is followed by Baiter. E. has 'a maximis,' and P. 'amircissimis.' The correction of Lauredanus may be true; but he would not have it in the text, because the oldest MSS. have another reading. Modern editors are neither so scrupulous nor so wise as the old editors.

alia ratione] 'aliqua ratione,' Madvig, Baiter; for which I see no 'ratio' at all. It is a covert imputation. He says at the beginning of the next chapter: 'Atque etiam est alia,' &c.—'notione:' means the same as 'cognitione,' the judgment, decision.

22. *Hiempsalem,*] A king of this name in Numidia received the son of Marius when he fled from Italy B. C. 88. Some years after he was ejected from his kingdom, but he was restored by Cn. Pompeius B. C. 81. He may be the same whom Cicero here speaks of as in possession of some land which belonged to the Roman state. As the country was probably ill peopled, Hiempsal would see no reason why he should not use land which the Romans had left waste. His son's name was Juba, and we must read with Lauredanus 'Juba regis filius.' The MSS. have 'Jubae.' There is another insinuation at the end of this paragraph.—'ei tamen,' Lambinus, Baiter: 'et tamen,' E. F. A.

Auget, addit, accumulat: AURUM, ARGENTUM EX PRAEDA, EX MANUBIIS, EX CORONARIO, AD QUOSCUMQUE PERVENIT, NEQUE RELATUM EST IN PUBLICUM, NEQUE IN MONUMENTO CONSUMPTUM, id profiteri apud decemviros et ad eos referre jubet. Hoc capite etiam quaestionem de clarissimis viris, qui populi Romani bella gesserunt, judiciumque de pecuniis repetundis ad decemviros translatum videtis. Horum erit [nullum] judicium quantae cujusque manubiae fuerint, quid relatum, quid residuum sit. In posterum vero lex haec imperatoribus vestris constituitur ut, quicumque de provincia decesserit, apud eosdem decemviros quantum habeat praedae, manubiarum, auri coronarii, profiteatur. Hic tamen vir optimus eum quem amat excipit, Cn. Pompeium. Unde iste amor tam improvisus ac tam repentinus? Qui honore decemviratus excluditur prope nominatim; cujus judicium legumque datio, captorum agrorum ipsius virtute cognitio tollitur; cujus non in provinciam, sed in ipsa castra decemviri cum imperio, infinita pecunia, maxima potestate et judicio rerum omnium mittuntur; cui jus imperatorium, quod semper omnibus imperatoribus est conservatum, soli eripitur; is excipitur unus ne manubias referre debeat. Utrum tandem hoc capite honos haberi homini an invidia quaeri videtur?

XXIII. Remittit hoc Rullo Cn. Pompeius: beneficio isto legis, benignitate decemvirali nihil utitur. Nam si est aequum praedam ac manubias suas imperatores non in monumenta deorum immortalium neque in Urbis ornamenta conferre, sed ad decemviros tamquam ad dominos reportare nihil sibi appetit praecipue Pompeius, nihil; vult se in communi atque in eodem quo ceteri jure versari. Sin est iniquum, Quirites, si turpe, si intolerandum, hos decemviros portitores omnibus omnium pecuniis constitui, qui non modo

Horum erit nullum] 'Nullum' cannot be right. Baiter follows Lauredanus, who suggests 'horum erit nunc,' for 'nunc' is the only word that occurs to him which is not inconsistent with the sense and the characters. I do not think that 'nunc' is the word. Lambinus had at home, as he says, an edition which had 'illud' for 'nullum.' Gebhardt would have 'nunc illud;' and that may be right.

referre debeat.] E. has 'jubeat,' whence Graevius concludes that the reading should be 'jubeatur,' for the last letters of this word have been 'absorbed,' it is his word, by the following word 'utrum.'

23. *Remittit hoc*] Cn. Pompeius rejects Rullus' offer: he will not accept what he offers.—'praecipue:' 'praecipui,' Orelli, Baiter. I see no reason for the change.

portitores—excutiant,] The collectors of tolls examined goods, baggage, and travellers: they rummaged their things and their persons, to find out if they were evading the tolls. This was called 'excutere,' and is well known to us. These same pestilent fellows who plague people now plagued them nineteen hundred years ago. Plutarch (περὶ πολυπραγ.) has a few words about them. They had the impertinence to open letters (Plaut. Trinum. iii. 3, 65) like a modern secretary of state. Horace (Sat. i. 3. v. 35, Macleane's ed.) has 'te ipsum Concute.'

All this talk of Cicero shows what an humble slave he was to Pompeius and the successful generals of Rome. These men, like L. Lucullus, Cn Pompeius, and others,

reges atque exterarum nationum homines sed etiam imperatores vestros excutiant, non mihi videntur honoris caussa excipere Pompeium, sed metuere ne ille eandem contumeliam quam ceteri ferre non possit. Pompeius autem hoc animo est ut quidquid vobis placeat sibi ferendum putet, quod vos ferre non poteritis, id profecto perficiet ne diutius inviti ferre cogamini. Verumtamen cavet ut, si qua pecunia post nos consules ex novis vectigalibus recipiatur, ea decemviri utantur. Nova porro vectigalia videt ea fore quae Pompeius adjunxerit. Ita remissis manubiis, vectigalibus ejus virtute partis se frui putat oportere.

Parta sit pecunia, Quirites, decemviris tanta quanta sit in terris; nihil praetermissum sit; omnes urbes, agri, regna denique, postremo etiam vectigalia vestra venierint; accesserint in cumulum manubiae vestrorum imperatorum: quantae et quam immanes divitiae decemviris in tantis auctionibus, tot judiciis, tam infinita potestate rerum omnium quaerantur videtis. XXIV. Cognoscite nunc alios immensos atque intolerabiles quaestus, ut intelligatis ad certorum hominum importunam avaritiam hoc populare legis agrariae nomen esse quaesitum. Hac pecunia jubet agros emi quo deducamini. Non consuevi homines appellare asperius, Quirites, nisi lacessitus. Velim fieri posset ut a me sine contumelia nomi-

got enormous wealth in irregular ways. They could help themselves as they liked, and it would have been most difficult to make them account for what they took. In fact Pompeius, as Cicero tells us, was not a man to be brought to a reckoning.

quanta sit in] 'Quanta est in:' Lambinus, Baiter.—'nihil praetermissum sit; omnes.' this is the emendation of Lauredanus in place of 'nihil praetermissum; sed omnes.' This excellent and modest critic says: "I think that *sit* is better than *sed*, the adversative particle being removed and the verb put in its place—the error arose from this, that the ancients wrote *set* for *sed*."

24. *Velim*] 'Vellem,' Ernesti, Baiter. —'Velim,' E. F. A. The distinction between 'velim' and 'vellem' is well determined. By 'velim' a man expresses his wish in a modest way, as when Cicero says to Tiro (Ad Div. xvi. 9): "Sed tamen ita velim ut ne quid properes;" and he adds "Symphoniam Lysonis vellem vitasses;" which expresses a wish that Tiro had not done that which he had done. 'Vellem' is a conditional form of speech, in which the condition is not expressed. Here he means to say; "I should be glad if I could without censure name the men." He means no more. I see no reason why 'Velim fieri posset ut' may not be right. If we read 'vellem,' it means, "If it had been in my power, I would have been glad to name them without censure;" as if it might once have been in his power, and was not now. But this is false. He never could have named them without censure, for the censure was in the men's names; and that was a thing that never could have been different from what it was at the time when he is speaking. I conclude that 'vellem' does not express Cicero's meaning. Klotz has retained 'velim,' and he has done right. He has the following note: "Such passages are peculiarly appropriate for the discovery of the proper signification of many expressions, as here Contumelia. For 'sine contumelia' we should say 'ohne die Discretion zu verletzen, ohne vor der Zeit Leute zu compromittiren.'" It is hard to see how this passage helps us to the proper meaning of Contumelia. The passage in Caesar (B. G. iii. 13) seems to me to help us more. It is strange to see a man of some ability writing such notes. He passes over many things that people less learned than himself wish to have explained; and instead of some-

narentur ii qui se decemviros sperant futuros: jam videretis quibus hominibus omnium rerum et vendendarum et emendarum potestatem permitteretis. Sed quod ego nondum statuo mihi esse dicendum, vos tamen id potestis cum animis vestris cogitare. Unum hoc certe videor mihi verissime posse dicere: tum quum haberet haec res publica Luscinos, Calatinos, Acidinos, homines non solum honoribus populi rebusque gestis, verum etiam patientia paupertatis ornatos, et tum quum erant Catones, Phili, Laelii, quorum sapientiam temperantiamque in publicis privatisque, forensibus domesticisque rebus perspexeratis; tamen hujuscemodi res commissa nemini est ut idem judicaret et venderet, et hoc faceret per quinquennium toto in orbe terrarum, idemque agros vectigales populi Romani abalienaret, et quum summam tantae pecuniae nullo teste

thing instructive, he treats us with this stuff. I have found no English name for such a note. A Frenchman would call it 'fade;' or what is more, 'plat.'

tum quum haberet—tum quum erant] Why is the expression not the same in both places? He begins with a form (videor—posse dicere), in which what follows depends on 'dicere,' and the expression is what we call indirect, and the subjunctive is used. He passes to the other form, the indicative, as if he feels that he is speaking directly, in his own person. It is only the lovers of grammatical propriety, as it is called, who might be offended here. The sense is clear enough; it is well said.

Luscinos] The Luscini were Fabricii. C. Fabricius Luscinus is the Roman who fought against Pyrrhus, and whose name was remembered with delight by his countrymen. The Calatini were Atilii. A. Atilius Calatinus commanded in the first Punic war, was twice consul, and once dictator. On one occasion when the Senate sent for him to assume the command, he was found sowing his land. His monument bore the record of his being the first man of his age (De Senect. 17). The Acidini were Manlii. It is not the purpose of a note to give the history of all the men who are quoted as examples. The example is the thing to observe. Rome had its heroic age: the Romans knew that they had such an age, and we may believe them. Polybius saw the end of it: he saw the destruction of Carthage and the savage sack of Corinth, and the beginning of a worse time. But he has recorded (vi. 56) his testimony that some honesty still remained: a Roman could still handle public money without any of it sticking to his fingers. Those who do not believe in the substantial truth of the history of a Fabricius show more self-sufficiency than sense. Great deeds, great lives, and heroic characters are not inventions. Fiction alone never made such characters. Rome had an age when men lived heroic lives; not all men, but some. A nation of heroes would indeed be a fiction. These noble men filled the highest offices of the State, and both before and after they lived in honourable poverty (patientia paupertatis ornatos); honourable poverty, a very contradiction in modern times. No titles of rank obscured the name of an illustrious Roman: no gifts of money, of wide estates, no pensions paid for services which are above all price. The consciousness of having served his country and the admiration of his countrymen were the rewards of the heroic Roman. States live and are great by great examples. Religious systems are founded and exist by great lives. It is a living man which makes a thing live; there is no life else either in a state or in a religion. Wealth, rank, title, are not the rewards of merit; there is an ambition which they cannot satisfy. The man who led the armies of the United States and settled the Republic in peace; who received the thanks of his countrymen and retired to cultivate his farm—he is the only man in modern times who has shown what the heroic Roman was. Future generations may find it easier to doubt his existence, and to deny his virtues than to imitate them. The negation of the great, the heroic in the past, is the confession of the weakness of the present.

sibi ipse ex sua voluntate fecisset, tum denique emeret a quibus vellet quod videretur. Committite nunc vos, Quirites, his hominibus haec omnia, quos odorari hunc decemviratum suspicamini: reperietis partem esse eorum quibus ad habendum, partem quibus ad consumendum nihil satis esse videatur.

XXV. Hic ego jam illud, quod expeditissimum sit, ne disputo quidem, Quirites, non esse hanc vobis a majoribus relictam consuetudinem, ut emantur agri a privatis quo plebes publice deducatur; omnibus legibus agris publicis privatos esse deductos; hujuscemodi me aliquid ab hoc horrido ac truce tribuno plebis exspectasse: hanc vero emendi et vendendi quaestuosissimam ac turpissimam mercaturam alienam actione tribunicia, alienam dignitate populi Romani semper putavi. Jubet agros emi? Primum quaero quos agros et quibus in locis? nolo suspensam et incertam plebem Romanam obscura spe et caeca exspectatione pendere. Albanus ager est, Setinus, Privernas, Fundanus, Vescinus, Falernus, Literninus, Cumanus, Casinas. Audio. Ab alia porta, Capenas, Faliscus, Sabinus, Reatinus, Venafranus, Allifanus, Trebulanus. Habes tantam pecuniam qua hosce omnes agros et ceteros horum similes non modo emere, verum etiam coacervare possis; cur eos non definis neque nominas ut saltem deliberare plebs Romana possit quid intersit sua, quid expediat, quantum tibi in emendis et in vendendis rebus committendum putet? Definio, inquit, Italiam. Satis certa regio. Etenim quantulum interest,

25. *expeditissimum sit,*] 'Est:' Wesenberg, Baiter; and they may make Cicero say 'est,' if they like. But when he says 'sit,' he says a different thing, which anybody can understand, who has read him with care.

agris publicis] The critics do not agree in their interpretation of this ablative case. However, he may mean that by all former 'leges agrariae' the 'plebes' were settled on public lands. Yet the beginning of c. 26, 'decedent de—deducti,' seems to show that 'agris publicis,' &c., may mean that the 'privati' were turned out of the 'agri publici.'

Albanus ager] All these tracts are south of Rome. Rullus is supposed to say "These are the tracts, the lands of Alba," and so on. Cicero says 'audio,' a common form with him: "Well, I hear what you say; what next?" 'Ab alia porta:' he now turns to the north of Rome.

There is some doubt about Vescinus. The reading of most of the MSS. is Vestinus. F. has Fescinus, which comes near to Vescinus. Vescia is a place in Campania, on the Liris. Instead of Casinas, Baiter reads Casilinas with Camillus Peregrinus, a change for which I see no reason. Casinum was on the Via Latina, the most southern town of Latium in that direction.

coacervare] This word has troubled the critics; I do not know why. Cicero says, "you have money enough, I do not say to buy, but even to pile up one on the other all these lands and others like them; why do you not mark their limits, tell us their names?"

Satis certa regio.] Rullus says, "Well, I shall choose my lands within the limits of Italy." "Very nice limits indeed," says Cicero sarcastically; 'for how little difference it makes whether you Romans are settled at the foot of Mons Massicus or in Italy generally, or any where else." It is hard to understand how the commentators make some of their blunders. One begins and the rest follow. As to 'Italiam aliove,'

utrum in Massici radices an in Italiam aliove deducamini. Age, non definis locum. Quid, naturam agri? Vero, inquit, QUI ARARI AUT COLI POSSIT. Qui possit arari, inquit, aut coli; non qui aratus aut cultus sit. Utrum haec lex est an tabula Neratianae auctionis, in qua scriptum fuisse aiunt: JUGERA CC, IN QUIBUS OLIVETUM FIERI POTEST: JUGERA CCC, UBI INSTITUI VINEAE POSSUNT. Hoc tu emes ista innumerabili pecunia quod arari aut coli possit? Quod solum tam exile et macrum est quod aratro perstringi non possit, aut quod est tam asperum saxetum in quo agricolarum cultus non elaboret? Idcirco, inquit, agros nominare non possum, quia tangam nullum ab invito. Hoc [que] multo est quaestuosius quam si ab invito sumeret. Inibitur enim ratio quaestus de vestra pecunia: et tum denique ager emetur quum idem expediet emptori et venditori.

XXVI. Sed videte vim legis agrariae. Ne ii quidem qui agros publicos possident decedent de possessione, nisi erunt deducti optima conditione et pecunia maxima. Conversa ratio. Antea quum erat a tribuno plebis mentio legis agrariae facta, continuo qui agros publicos aut qui possessiones invidiosas tenebant pertimescebant. Haec lex eos homines fortunis locupletat, invidia liberat. Quam multos enim, Quirites, existimatis esse qui latitudinem possessionum tueri, qui invidiam Sullanorum agrorum ferre non possint; qui vendere cupiant, emptorem non reperiant; perdere jam denique illos agros ratione aliqua velint? Qui paullo ante diem noctemque tribunicium nomen horrebant, vestram vim

Sigonius wrote Apuliam in place of Italiam; and so does Baiter. Ant. Augustinus proposed Liguriam; why not Galliam, Britanniam; anything? They saw that Cicero meant to contrast the fertile Massic territory with something, and they supposed it must be a barren territory that makes the contrast. Accordingly they choose all Apulia; but Apulia is a rich corn country, and a pasture country. It is very dry, and there are swamps: but Apulia means all Apulia, and there was good as well as bad there. The contrast is between a definite place and an indefinite place; and accordingly Italiam is just the word, the word that Rullus has used, or is supposed to have used, the word that Cicero ridicules, the word that he repeats, with the addition 'aliove.' What could be plainer? Ursini saw it.

Neratianae] Or Veratianae (See Pro Flacco, c. 20): it matters not. In his advertisement this man did not describe the land which was for sale as olive plantation or vineyard, but as capable of being planted with the olive and the vine. I do not see what there is in this. The man had land to sell and he described it truly. Perhaps nobody would buy, but that was not his fault. Columella opposes 'humus pinguis' and 'exilis' (ii. 2). Here 'solum exile' seems to mean a scanty soil, little of it. Columella shows (ii. 4) what 'pinguis' means: it is a heavy, stiff soil. 'Exilis humus' as opposed to 'pinguis' is light soil.

Hoc que] E. F. have 'hocque:' the other MSS. have 'hoc quoque.' Klotz, followed by Baiter, has 'hoc, Quirites.' There is no harm in such a correction, for it means nothing. We know that Cicero could say 'hoc, Quirites.'

26. *perdere jam denique*] This is an oratorical exaggeration. All he means is that they would be glad to get rid of their lands on any terms.

metuebant, mentionem legis agrariae pertimescebant, ii nunc etiam ultro rogabuntur atque orabuntur ut agros partim publicos, partim plenos invidiae, plenos periculi, quanti ipsi velint decemviris tradant. Atque hoc carmen hic tribunus plebis non vobis, sed sibi intus canit. Habet socerum, virum optimum, qui tantum agri in illis rei publicae tenebris occupavit quantum concupivit. Huic subvenire vult succumbenti, jam oppresso, Sullanis oneribus gravi, sua lege ut liceat illi invidiam deponere, pecuniam condere. Et vos non dubitatis quin vectigalia vestra vendatis, plurimo majorum vestrorum sanguine et sudore quaesita, ut Sullanos possessores divitiis augeatis, periculo liberetis? Nam ad hanc emptionem decemviralem duo genera agrorum spectant, Quirites. Eorum unum propter invidiam domini fugiunt, alterum propter vastitatem. Sullanus ager a certis hominibus latissime continuatus tantam habet invidiam ut veri ac fortis tribuni plebis stridorem unum perferre non possit. Hic ager omnis, quoquo pretio coemptus erit, tamen ingenti pecunia nobis inducetur. Alterum genus agrorum, propter sterilitatem incultum, propter pestilentiam vastum atque desertum, emetur ab iis qui eos vident sibi esse si non vendiderint relinquendos. Et nimirum [idem] est quod ab hoc tribuno plebis dictum est in senatu: urbanam plebem nimium in re publica posse, exhauriendam esse; hoc enim verbo est usus, quasi de aliqua sen-

sibi intus canit.] See Vol. I. Verr. ii. 3. c. 20.

tenebris] The learned Lauredanus observes that no word could be better chosen to mark the dishonesty of Valgius, and he refers to the Iliad (iii. 10) to the description of the mist or fog. It seems that Homer knew that a fog was better for the thief even than night:—

> Εὖτ ὄρεος κορυφῇσι νότος κατέχευεν ὀμίχλην,
> Ποιμέσιν οὔτι φίλην, κλέπτῃ δέ τε νυκτὸς ἀμείνω.

oppresso,] 'expresso,' E. F. P. Halm writes 'et presso,' and Baiter follows him.—'gravi, sua lege:' E. F. A.: 'gratissuma lege,' Halm, Baiter: 'grata sua,' Gebhardt. What shall we have next?

continuatus] These men had extended their estates beyond the limits of what they got from Sulla. He does not say how they had done it; but it was not done honestly. Fraud and violence were used. There might be sometimes a show of title, perhaps a real title, as owners of what they got from Sulla, to receive rent; and when the rent was not paid, ejection would follow. The house would be pulled down, the beasts driven off, the occupier, who was worth less than a beast, for he could not be sold, would be driven out with his wife and children, and might go where he could or die by the road. Modern history has shown us examples of this. Horace (Carm. ii. 18) has a picture of the misery of ejected families:—

> "Quid, quod usque proximos
> Revellis agri terminos et ultra
> Limites clientium
> Salis avarus? Pellitur paternos
> In sinu ferens deos
> Et uxor et vir sordidosque natos."

And Goldsmith, 'The Deserted Village.'

pecunia—inducetur.] See De Leg. Agr. i. 5. I hardly know the best translation for this word. It is, however, as Manutius says, the same as 'in tabulas publicas referre;' for Cicero says elsewhere: "Testes sunt rationes civitatum: in quibus quantum quaeque voluit, legatis tuis datum induxit" (Ad Appium).—'[idem]': the reading of E. F. P.

exhauriendam] Rullus used what we call a strong expression. A 'sentina' is

tina ac non de optimorum civium genere loqueretur. XXVII. Vos vero, Quirites, si me audire vultis, retinete istam possessionem gratiae, libertatis, suffragiorum, dignitatis, Urbis, fori, ludorum, festorum dierum, ceterorum omnium commodorum; nisi forte mavultis, relictis his rebus atque hac luce rei publicae, in Sipontina siccitate aut in Salapinorum pestilentiae finibus Rullo duce collocari. At dicat quos agros empturus sit; ostendat et quid et quibus daturus sit. Ut vero, quum omnes urbes, agros, vectigalia, regna vendiderit, tum arenam aliquam aut paludes emat, id vos potestis, quaeso, concedere? Quamquam illud est egregium, quod hac lege ante omnia veneunt, ante pecuniae coguntur et coacervantur quam gleba una ematur. Deinde emi jubet: ab invito vetat. Quaero si qui velint vendere non fuerint, quid pecuniae fiet? Referre in aerarium lex vetat: exigi prohibet. Igitur pecuniam omnem decemviri tenebunt: vobis ager non emetur. Vectigalibus abalienatis, sociis vexatis, regibus atque omnibus gentibus exinanitis, illi pecunias habebunt, vos agros non habebitis. Facile, inquit, adducentur pecuniae magnitudine ut velint vendere. Ergo ea lex est qua nostra vendamus quanti possimus, aliena emamus quanti possessores velint.

Atque in hos agros, qui hac lege empti sint, colonias ab his decemviris deduci jubet. Quid, omnisne locus ejusmodi est ut nihil intersit rei publicae colonia deducatur in eum locum necne? An est locus qui coloniam postulet [est plane rectius et]? Quo in

the lowest part of a ship's hold, where the dirty water collects. Rullus said the 'plebs' must be pumped out: he spoke as if they were the bilge-water in the ship of state. They were like the stuff in a drain, in a cesspool. We are not quite so filthy in our notions. I recollect no lower term in our language than 'dregs,' to signify the same class; in which we agree with the French, who say 'la lie du peuple.'

27. *suffragiorum,*] Cicero exhorts the 'plebes' to stay where they are and to enjoy themselves. He does not tell them how they were to live. Turnebus has a bad note here. He supposes that these men would lose the 'suffragium,' which they certainly would not have done if they were settled any where south of the Po.

Sipontina] As Sipus or Sipontum was in Apulia, and also the swamps of Salapia, this may seem confirmation of the conjecture Apuliam (c. 25, notes). But it is not. Apulia was not all dry, nor all swamp. There was land in it for settlers, and it was settled: "decreverunt patres, ut M. Junius praetor urbis, si ei videretur, decemviros agro Samniti Appuloque, quod ejus publicum populi Romani esset, metiendo dividendoque crearet" (Livy, 31. c. 4). Sipontum had been already settled by the Romans.

quid pecuniae fiet?] E. F.; 'pecunia:' G. A. Baiter.

omnisne] He asks if it is an indifferent thing where the colony is placed; and then he asks "is there a place which requires a colonia?" The words which follow are unintelligible. Lauredanus altered the text thus: "An est locus qui coloniam postulet, est qui plane recuset," which Baiter has printed. The correction is ingenious, but I don't believe that it is the true text, and therefore I reject it.

Cicero here reminds the people of the object of the old 'coloniae,' which were fortresses, and defences of the Roman conquests. He calls Narbo in Gallia (Pro Fonteio, c. 5) "specula Populi Romani et propugnaculum."

genere, sicut in ceteris rei publicae partibus, est operae pretium diligentiam majorum recordari, qui colonias sic idoneis in locis contra suspicionem periculi collocarunt ut esse non oppida Italiae, sed propugnacula imperii viderentur. Hi deducent colonias in eos agros quos emerint. Etiamne si rei publicae non expediat? ET IN QUAE LOCA PRAETEREA VIDEBITUR. Quid igitur est caussae quin coloniam in Janiculum possint deducere et suum praesidium in capite atque cervicibus nostris collocare? Tu non definias quot colonias, in quae loca, quo numero colonorum deduci velis? tu occupes locum quem idoneum ad vim tuam judicaris? compleas numero, confirmes praesidio quo velis? populi Romani vectigalibus atque omnibus copiis ipsum populum Romanum coerceas, opprimas, redigas in istam decemviralem ditionem ac potestatem? XXVIII. Ut vero totam Italiam suis praesidiis obsidere atque occupare cogitet, quaeso, Quirites, cognoscite. Permittit decemviris ut in omnia municipia, in omnes colonias totius Italiae colonos deducant quos velint; iisque colonis agrum dari jubet. Num obscure majores opes quam libertas vestra pati potest, et majora praesidia quaeruntur? num obscure regnum constituitur? num obscure libertas vestra tollitur? Nam quum iidem omnem pecuniam, maximam multitudinem, id est, totam Italiam, suis opibus obsidebunt, iidem vestram libertatem suis praesidiis et coloniis interclusam tenebunt; quae spes tandem, quae facultas recuperandae vestrae libertatis relinquetur?

At enim ager Campanus hac lege dividetur, orbis terrae pulcherrimus; et Capuam colonia deducetur, urbem amplissimam atque ornatissimam. At quid ad haec possumus dicere? De commodo vestro prius dicam, Quirites; deinde ad amplitudinem et dignitatem revertar: ut, si quis agri aut oppidi bonitate delectetur,

coerceas,] 'coherceas,' E.; perhaps the true form.

28. *multitudinem,*] Baiter inserts 'obtinebunt' after 'multitudinem,' which is an addition by Lauredanus, who could not understand 'multitudinem — obsidebunt.' He should have explained 'multitudinem obtinebunt.' The other is as plain. What difference is there between 'holding a thing' and 'sitting on it?'—'id est,' E.; 'idem,' F.

orbis terrae pulcherrimus;] Pliny (H. N. iii. 5) calls it Campania Felix, the fertile tract which lies between the first ridges of the Apennines and the sea, and extends from the Mons Massicus on the north to the promontory of Surrentum, the Terra di Lavoro of the modern kingdom of Naples. Ancient writers (Strabo, p. 242, ed. Cas., and others) and modern writers are eloquent in their description of this fertile land, which produced wine, corn, and oil in abundance. The Roman revenue from the vineyards (see c. 14), the corn land, and the olive plantations of this rich country must have been very considerable, if it was well administered; and a wise statesman would certainly not have been ready to give up such an income at a time when the means of the State were neither great nor certain.

At quid?] Baiter has 'quid' only. The MSS. have 'atqui' or 'atque;' and Graevius may be right, who thinks that 'at' alone is wanted.

ne quid exspectet; si quem rei dignitas commovet, ut huic simulatae largitioni resistat. Ac primum de oppido dicam, si quis est forte quem Capua magis quam Roma delectet. Quinque millia colonorum Capuam scribi jubet. Ad hunc numerum quingenos sibi singuli sument. Quaeso, nolite vosmetipsos consolari: vere et diligenter considerate. Num vobis aut vestri similibus integris, quietis, otiosis hominibus in hoc numero locum fore putatis? Si est omnibus vobis, si majori vestrum parti, quamquam me vester honos vigilare dies atque noctes et intentis oculis omnes rei publicae partes intueri jubet; tamen paullisper, si ita commodum vestrum feret, connivebo. Sed si quinque hominum millibus, ad vim facinus caedemque delectis, locus atque urbs quae bellum facere atque instruere possit quaeritur, tamenne patiemini vestro nomine contra vos firmari opes, armari praesidia, urbes, agros, copias comparari? Nam agrum quidem Campanum, quem vobis ostentant, ipsi concupiverunt: deducent suos quorum nomine ipsi teneant et fruantur: coement praeterea: ista dena jugera continuabunt. Nam si dicent per legem id non licere, ne per Corneliam quidem licet. At videmus, ut longinqua mittamus, agrum Praenestinum a paucis possideri; neque istorum pecuniis quidquam aliud deesse video, nisi ejusmodi fundos quorum subsidio familiarum magnitudines, et Cumanorum ac Puteolanorum praediorum sumptus sustentare possint. Quod si vestrum commodum spectat, veniat et coram mecum de agri Campani divisione disputet. XXIX. Quaesivi ex eo Kalendis Jan. quibus hominibus et quemadmodum illum agrum esset distributurus. Respondit, a Romulia tribu se initium

rei dignitas] 'rei p. dignitas,' Baiter. It is supposed that the 'p.' has fallen out of the MSS. G. has 'rei indignitas.'

Capuam scribi] I suppose we must take this as equivalent to 'Capuam deduci,' which he has just used; or it is easy to suppose 'scribi' to be equivalent to 'scribi deducenda,' as Turnebus says.

dena jugera] He says that the Decemviri will hold and enjoy Campanian land in the name of others (sui), but he does not explain how this was to be done. They will also buy up the allotments: they will add one allotment of ten 'jugera' to another, and so make large estates. The law, we must infer, proposed to forbid the sale of the allotments, as a Lex Cornelia of Sulla had done. When he says 'a paucis possideri,' he does not mean that it was 'ager publicus,' which was 'possessus.' He means that they were the owners. Sulla seized the lands of Praeneste and gave them to his 'coloni.' He massacred the population of Praeneste, because the town had sheltered the younger Marius (Plutarch, Sulla, c. 32).

istorum pecuniis] The 'isti' are the Decemviri; or perhaps the men who held the lands of Praeneste, some of whom might be elected Decemviri; 'pecuniae' is their property. It is a general term equivalent to 'bona.' He says that all they want now is such lands as those of Campania, to enable them to maintain their large bodies of slaves and dependants, and to keep up their expensive 'villae' at Cumae and Puteoli. The Romans built houses on this coast from Cumae as far as Herculanum, as we may suppose from what has been said about the Via Herculanea.

29. *Romulia*] The four Urbanae tribus stood first; then came the Romulia or Romilia, the fifth in rank and the first of the Rusticae.

esse facturum. Primum, quae est ista superbia et contumelia ut populi pars amputetur, ordo tribuum negligatur? Ante rusticis detur ager qui habent, quam urbanis quibus ista agri spes et jucunditas ostenditur? Aut, si hoc ab se dictum negat, et satisfacere omnibus vobis cogitat, proferat; in jugera dena describat; a Suburana usque ad Arniensem nomina vestra proponat. Si non modo dena jugera dari vobis, sed ne constipari quidem tantum numerum hominum posse in agrum Campanum intelligetis, tamenne vexari rem publicam, contemni majestatem populi Romani, deludi vosmetipsos diutius a tribuno plebis patiemini?

Quod si posset ager iste ad vos pervenire, nonne eum tamen in patrimonio vestro remanere malletis? Unumne fundum pulcherrimum populi Romani, caput vestrae pecuniae, pacis ornamentum, subsidium belli, fundamentum vectigalium, horreum legionum, solatium annonae, disperire patiemini? An obliti estis, Italico bello, amissis ceteris vectigalibus, quantos agri Campani fructibus exercitus alueritis? An ignoratis cetera illa magnifica populi Romani vectigalia perlevi saepe momento fortunae, inclinatione temporis pendere? Quid nos Asiae portus, quid Syriae rura, quid omnia

The name occurs elsewhere in Cicero, and on inscriptions, where it is generally written ROM. All the MSS. are said to have "ab usura nam . . ad Arniensem," which Lauredanus corrected by transposing the letters: "a Suburana . . ad Arniensem," the Suburana being the first of the Urbanae, and the Arniensis the last of the Rusticae. The Arniensis is proved by the authority of the MSS. and inscriptions, where it is written AR. and ARN. and ARNENSIS. But the Arniensis was formed before some of the Rusticae tribus (Livy vi. 5: "Tribus quatuor ex novis civibus additae; Stellatina, Tromentina, Sabatina, Arniensis, eaeque viginti quinque tribuum numerum explevere)." In this passage of Livy Narniensis is read in some editions. The two last tribes which were formed were Velina and Quirina. If Cicero then means from the first tribe to the last, as he must do, he does not take them chronologically, but according to their geographical position.

Si non modo dena] "If you shall perceive that not so much as ten 'jugera' apiece could be assigned to you, but that so large a multitude could not even be packed together on the Campanian territory."

agri Campani fructibus] At this time the amount of taxation which the Romans paid was not large, though their expenditure was. The revenue was derived from foreign states, such as Asia, Sicily, and others, and from the payments which came in from the State property in Italy. The income from the Campanian land was certain (c. 30): the rest was uncertain. The public expenditure must be sustained either by the income of public property or by taxation. As States are not formed on a certain plan, but grow up from small beginnings, there is not sufficient provision made, when a State is small, to meet the expenditure when it grows large. Hence taxation comes, which is an easier way of getting money for public purposes than by reserving public land and letting it. There are many difficulties in the management of public property; and it is generally ill administered. The Roman conquests in Italy and abroad gave them the opportunity of reserving land enough to meet at least the ordinary expenses of the government by the income from these lands, but it was impossible to secure a good administration of such wide possessions situated so far from Rome.

Syriae rura] G. has 'tura.' Horace (Carm. i. 1) says 'oppidi Rura sui;' where Bentley after his fashion proposed to write 'tuta.' In this passage Gebhardt writes, and Baiter follows, 'scriptura' for 'Syriae rura.' E. F. have 'Syriae rura;' and G. has 'Syriae tura.' Syria was made a province by Cn. Pompeius in B.C. 64, the year before

transmarina vectigalia juvabunt, tenuissima suspicione praedonum aut hostium injecta? At vero hoc agri Campani vectigal quum ejusmodi est ut et domi sit et omnibus praesidiis oppidorum tegatur, tum neque bellis infestum, nec fructibus varium, nec caelo ac loco calamitosum esse solet. Majores nostri non solum id quod Campanis ceperant non imminuerunt, verum etiam id quod ii tenebant quibus adimi jure non poterat coemerunt. Qua de caussa nec duo Gracchi, qui de plebis Romanae commodis plurimum cogitaverunt, nec L. Sulla, qui omnia sine ulla religione quibus voluit est dilargitus, agrum Campanum attingere ausus est. Rullus exstitit qui ex ea possessione rem publicam demoveret, ex qua nec Gracchorum benignitas eam nec Sullae dominatio dejecisset. XXX. Quem agrum nunc praetereuntes vestrum esse dicitis, et quem per iter qui faciunt externi homines vestrum esse audiunt, is quum erit divisus, [neque erit] neque vester esse dicetur. At qui homines possidebunt? Primo quidem acres, ad vim prompti, ad seditionem parati, qui simulac decemviri concrepuerint armati in cives et expediti ad caedem esse possint. Deinde ad paucos, opibus et copiis affluentes, totum agrum Campanum perferri videbitis. Vobis interea, qui illas a majoribus pulcherrimas vectigalium sedes armis captas accepistis, gleba nulla de paternis atque avitis possessionibus relinquetur. At tantum intererit inter vestram et privatorum

this oration was delivered; and the Romans could have got nothing yet from the lands of Syria. But that is no reason why Cicero might not speak as he did. The correction is ingenious, and may be defended.

bellis infestum] "Not exposed to wars." The produce too was certain; nor was it exposed to damage (calamitosum) from the weather or the situation. Cicero gives the meaning of 'calamitas' in another place (Vol. I. Verr. ii. 3. c. 98).

ea possessione] 'Possessio' here means ownership, of which the outward sign is 'possessio' in the plain sense; the holding and enjoying, and excluding others from holding and enjoying. The unseen part of ownership is the right to the exclusive enjoyment of a thing. Again, when the land shall be divided, he says (c. 33) "it will neither be yours nor will it be called yours." He then adds: "But who will be the owners (possidebunt)?" The Romans had no verb to express ownership except 'possidere,' 'habere,' 'tenere.' Confused notions about the word 'possidere' have been introduced since people began to discuss the 'possessio' of the Roman Ager Publicus. No language contains less accuracy in the ideas attached to possess and possession than our own legal language, which is the language of confusion.

30. *et quem per iter*] E. The reading of F. G. 'et quem pariter' is obviously a blunder. 'Quem per' is not the usual order; but we have 'qua de re,' 'quam ob caussam,' and other like expressions. If Cicero had said 'quem per agrum,' it would not seem strange; and 'agrum' may either have been omitted, or it would be no great change to transfer this word from its place after the first 'quem,' and put it after 'per.' The words 'neque erit' are only in the edition of Hervagius. Something is wanting there.

armati in cives] Caesar in his consulship B.C. 59 distributed the land of Campania; and C. Octavius in B.C. 44 raised troops there and marched with them on Rome. (Cicero, Ad Att. xvi. 8, 9, 11, 15; Philipp. iii. 2.) Cicero saw clearly enough the mischief that might happen.

At tantum—quod, quum] I see no reason for Baiter's "At tantum—diligentiam, Quirites? Cum a majoribus," &c.: nor

diligentiam, quod, quum a majoribus nostris P. Lentulus, qui princeps senatus fuit, in ea loca missus esset, ut privatos agros, qui in publicum Campanum incurrebant, pecunia publica coemeret, dicitur renuntiasse, nulla se pecunia fundum cujusdam emere potuisse; eumque qui nollet vendere, ideo negasse se adduci posse uti venderet, quod, quum plures fundos haberet, ex illo solo fundo numquam malum nuntium audisset. Itane vero privatum haec caussa commovit; populum Romanum, ne agrum Campanum privatis gratis, Rullo rogante, tradat, non commovebit? Atqui idem populus Romanus de hoc vectigali potest dicere, quod ille de suo fundo dixisse dicitur. Asia multos annos vobis fructum Mithridatico bello non tulit: Hispaniarum vectigal temporibus Sertorianis nullum fuit: Siciliae civitatibus bello fugitivorum M'. Aquillius etiam mutuum frumentum dedit. At ex hoc vectigali numquam malus nuntius auditus est. Cetera vectigalia belli difficultatibus affliguntur: hoc vectigali etiam belli facultates sustentantur. Deinde in hac assignatione agrorum ne illud quidem dici potest quod in ceteris, agros desertos a plebe atque a cultura hominum liberorum esse non oportere. XXXI. Sic enim dico: si Campanus ager dividatur, exturbari et expelli plebem ex agris, non constitui et collocari. Totus enim ager Campanus colitur et possidetur a plebe, et a plebe optima et modestissima; quod genus

for Madvig's "At tantum—diligentiam? Cum," &c. Still less for Halm's "At quantum," &c. The MSS. reading is intelligible.

privatos agros,] There was private property which ran into, as Cicero expresses it, the public property, by which he means that some parts on the borders probably of the Campanian land had been appropriated, but he does not say how.

mutuum frumentum] In the Servile war in Sicily M'. Aquillius lent the Sicilians corn; a proof of the miserable condition to which the island was reduced by the rising of the slaves. We know a little about this Servile war, but not much. It was a time of trouble and calamity. We must complete the history of a servile insurrection by a modern history. The revolt in St. Domingo in 1791 will do.

belli facultates] E. F. P. have 'difficultatibus' and 'difficultates:' G. A. have 'facultatibus' and 'facultates.' The MSS. are in favour of 'difficultates,' which Baiter has. One MS. and the sense of the passage decide in favour of 'facultates.' It is sense to say that "all other 'vectigalia' are destroyed by the difficulties of war; by this 'vectigal' even the facilities for war are maintained." But when Cicero is playing with words and making antitheses, his meaning is often obscure, and the words are used in any way that he likes. It is not at all difficult to defend both 'difficultatibus' and 'difficultates.'

31. *possidetur a plebe,*] This is correctly explained by Lauredanus: "Quae conduxerat et vectigalem habebat Campanum agrum locatione perpetua." The 'plebes' possessed the land, but not as owners. We read of the proposal of Rullus without feeling what it was, unless we place before us a reality. A whole territory cleared of its industrious population, whose labour had improved the land, whose fathers were buried on it—men, women, children, and cattle driven out—what could be more monstrous? Yet this happened in the time of Sulla, and when the soldiers of Octavianus were planted in Italy. Modern writers often write of these things as if there was no reality in them; as if they were not among the greatest miseries that man has inflicted on himself, as if they were not the greatest crimes. But the Romans were

hominum optime moratum, optimorum et aratorum et militum, ab hoc plebicola tribuno pl. funditus ejicitur. Atque illi miseri, nati in illis agris et educati, glebis subigendis exercitati, quo se subito conferant non habebunt: his robustis et valentibus et audacibus decemvirûm satellitibus agri Campani possessio tota tradetur; et ut vos nunc de vestris majoribus praedicatis, Hunc agrum nobis majores nostri reliquerunt; sic vestri posteri de vobis praedicabunt, Hunc agrum patres nostri acceptum a patribus suis perdiderunt. Equidem existimo, si jam campus Martius dividatur, et uni cuique vestrum ubi consistat bini pedes assignentur, tamen promiscue toto quam proprie parva frui parte malitis. Quare, etiamsi ad vos esset singulos aliquid ex hoc agro perventurum, qui vobis ostenditur, aliis comparatur, tamen honestius eum vos universi quam singuli possideretis. Nunc vero quum ad vos nihil pertineat, sed paretur aliis, eripiatur vobis, nonne acerrime tamquam armato hosti sic huic legi pro vestris agris resistetis?

Adjungit Stellatem campum agro Campano, et in eo duodena describit in singulos homines jugera; quasi vero paullum differat ager Campanus a Stellati; sed multitudo, Quirites, quaeritur qua illa omnia oppida compleantur. Nam dixi antea, lege permitti ut quae velint municipia, quas velint veteres colonias, colonis suis occupent. Calenum municipium complebunt: Teanum opprimment: Atellam, Cumas, Neapolin, Pompeios, Nuceriam suis praesidiis devincient: Puteolos vero, qui nunc in sua potestate sunt, suo jure libertateque utuntur, totos novo populo atque adventitiis copiis occupabunt. XXXII. Tunc illud vexillum Campanae coloniae,

now corrupted. The great age of the Republic was long past. There were men great in understanding as there are in all ages: there were few great in heart. The glorious age of Rome ended with the conquest of Carthage: it ended when she had vanquished her greatest enemy. So it is in the life of man. His heroic age lasts as long as he has a great and noble end to attain, and no longer.

a Stellati; sed] This is the emendation of Turnebus. The readings are 'ac Stellatis. Et,' E. F. P. A.; 'ac Stellatis. At,' T. But Lauredanus had suggested the emendation. Less was given of Campanian land than of the Stellatis, not because the Campanian was more fertile, but (sed) because the Decemviri wished to fill Campania with their men.

Puteolos] Puteoli was a Romana Colonia founded B.C. 194 (Liv. 32. c. 29; 34. c. 45) at the same time as Vulturnum and Liternum, which were also Romanae Coloniae. The Romanae Coloniae, Buxentum, and Salernum, were founded the same year. Livy adds "Ager divisus est qui Campanorum fuerat." Part of the Campania territory then had been assigned above a hundred and thirty years back. Cicero says that Puteoli retained its liberty and had its own jurisdiction, for this is what he means. It had sustained no change since the time of its settlement. Cicero uses like expressions to those which are used to express a person being in the 'potestas' of another or independent of it. The opposite of 'in sua potestate esse' is 'in aliena potestate esse' (Gaius, i. 51).

32. *vexillum*] The correction of Lauredanus. Nothing can be made of the MSS. readings 'auxilium' and 'exsilium.' The change is very small; it consists in adding a

vehementer huic imperio timendum, Capuam a decemviris inferetur: tunc contra hanc Romam, communem patriam omnium nostrum, illa altera Roma quaeretur. In id oppidum homines nefarii rem publicam nostram transferre conantur, quo in oppido majores nostri nullam omnino rem publicam esse voluerunt; qui tres solum urbes in terris omnibus, Karthaginem, Corinthum, Capuam, statuerunt posse imperii gravitatem ac nomen sustinere. Deleta Karthago est, quod quum hominum copiis, tum ipsa natura ac loco, succincta portubus, armata muris, excurrere ex Africa, imminere [ita] fructuosissimis insulis populi Romani videbatur. Corinthi vestigium vix relictum est. Erat enim posita in angustiis atque in faucibus Graeciae sic ut terra claustra locorum teneret, et duo maria maxime navigationi diversa paene conjungeret, quum pertenui discrimine separarentur. Haec quae procul erant a conspectu imperii, non solum afflixerunt, sed etiam ne quando recreata exsurgere atque erigere se possent, funditus, ut dixi, sustulerunt. De Capua multum

letter to 'exsillum.' A 'vexilium' or flag was used at the 'deductio' of a Colonia.—'Capuam,' A.: the readings are 'Capua,' except one MS. which Turnebus quotes as authority for 'Capuae.' Something is said of Capua in the notes to the first oration.

excurrere ex Africa, imminere] These words express the position of Carthage on the promontory, which is turned towards Sicily and Italy; as Virgil describes it (Aen. i. 13):—

"Carthago Italiam contra Tiberinaque longe
Ostia."

'Ita' is probably corrupt. 'Italiae' has been proposed as an emendation.

maxime navigationi] 'Maximae,' E.; 'maxima,' F. But 'maxime' is right: it is 'maxime diversa:' two seas right opposite to one another for navigation, the Aegean and the Ionian. This word 'diversus' is often translated 'different,' and so it is misunderstood. It means 'turned in opposite directions.' The poets gave Corinthus the epithet 'bimaris.'

The history of Corinth shows the value of its position. The Romans complained that the law of nations had been violated here in the person of their legati. The Senate declared that it should be destroyed, and the work was done by a barbarous soldier, L. Mummius, B.C. 146. The men were massacred, the women and children were made slaves; and after the place was plundered, it was set on fire. It is one of the most brutal acts recorded in history. The priceless works of art were carried to Rome, but many perished. Polybius was present at the sack of Corinth (Strabo, p. 381), and he who gives the Romans a good character was a witness of this savage butchery. The passage of Strabo is instructive: "Polybius, when deploring what happened at the capture of Corinth, speaks also of the little value that the soldiers set on the works of art and the things dedicated to religion. For he says that he was present and saw paintings thrown on the ground and the soldiers playing at dice on them. He mentions among these paintings Aristides' Dionysus, which was the occasion, as some say, of the proverb, Nothing against Dionysus; and Hercules suffering in the garment sent by Deianira. This picture I never saw; but I saw the Dionysus which was placed in the temple of Ceres at Rome, and it was a most beautiful work. But when the temple was burnt, the picture also perished very recently. Of the other things in Rome dedicated to religion, almost the greater part and the best came from Corinth; and the cities around Rome had some."

De Capua] The public records (literae publicae) were the evidence of the deliberations about Capua; and the Senatusconsulta. He means therefore by 'literae publicae' something, which is not Senatusconsulta. The meaning of 'literae publicae' to signify public documents of any kind is common.

est et diu consultum: exstant litterae, Quirites, publicae; sunt senatusconsulta complura. Statuerunt homines sapientes, si agrum Campanis ademissent, magistratus, senatum, publicum ex illa urbe consilium sustulissent, imaginem rei publicae nullam reliquissent, nihil fore quod Capuam timeremus. Itaque hoc perscriptum in monumentis veteribus reperietis, ut esset urbs, quae res eas quibus ager Campanus coleretur suppeditare posset, ut esset locus comportandis condendisque fructibus, ut aratores cultu agrorum defessi urbis domiciliis uterentur, idcirco illa aedificia non esse deleta. XXXIII. Videte quantum intervallum sit interjectum inter majorum nostrorum consilia et inter istorum hominum dementiam. Illi Capuam, receptaculum aratorum, nundinas rusticorum, cellam atque horreum Campani agri esse voluerunt: hi expulsis aratoribus, effusis ac dissipatis fructibus vestris, eandem Capuam sedem novae rei publicae constituunt, molem contra veterem rem publicam comparant. Quod si majores nostri existimassent quemquam in tam illustri imperio et tam praeclara populi Romani disciplina M. Bruti aut P. Rulli similem futurum,—hos enim nos duos adhuc vidimus qui hanc rem publicam Capuam totam transferre vellent—profecto nomen illius urbis non reliquissent. Verum arbitrabantur, Corinthi et Karthagini, etiamsi senatum et magistratus sustulissent agrumque civibus ademissent, tamen non defore qui illa restituerent atque [qui] omnia ante commutarent quam nos audire possemus: hic vero in oculis senatus populique Romani nihil posse exsistere, quod non ante exstingui atque opprimi posset quam plane exortum ac natum esset. Neque vero ea res fefellit homines divina mente et consilio praeditos. Nam post Q. Fulvium Q. Fabium consules, quibus consulibus Capua devicta atque capta est, nihil est in illa urbe contra hanc rem publicam, non dico factum, sed nihil omnino est cogitatum. Multa postea bella gesta cum regibus, Philippo, Antiocho, Persa, Pseudophilippo, Aristonico, Mithridate et ceteris: multa praeterea bella gravia, Karthaginiense, Corinthium, Numantinum: multae in hac re publica seditiones domesticae, quas praetermitto: bella cum sociis, Fregellanum, Marsicum: quibus

33. *Q. Fulvium Q. Fabium*] 'In B.C. 209. But it was taken in B.C. 211 according to Livy (26. c. 1).'

Fregellanum,] After mentioning the kings with whom the Romans had fought, and on the defeat of each had extended their dominions, he mentions the wars against three republics, Carthage, Corinth, and Numantia. But it seems ridiculous to mention Corinth and Numantia by the side of Carthage: they were merely two towns, not two powerful states. Corinth made no resistance; and Numantia is only known for the desperate defence which it made against Scipio Africanus the younger B.C. 134.

Fregellae was a town on the Liris, once a flourishing place and the ally of Rome in the war with Hannibal. The revolt against

omnibus domesticis externisque bellis Capua non modo non obfuit, sed opportunissimam se nobis praebuit et ad bellum instruendum, et ad exercitus ornandos et tectis ac sedibus suis recipiendos. Homines non inerant in urbe qui malis contionibus, turbulentis senatusconsultis, iniquis imperiis rem publicam miscerent et rerum novarum caussam aliquam quaererent. Neque enim contionandi potestas erat cuiquam nec consilii capiundi publici: non gloriae cupiditate efferebantur, propterea quod, ubi honos publice non est, ibi gloriae cupiditas esse non potest; non contentione, non ambitione discordes. Nihil enim supererat de quo certarent; nihil quod contra peterent; nihil ubi dissiderent. Itaque illam Campanam arrogantem atque intolerandam ferociam ratione et consilio majores nostri ad inertissimum ac desidiosissimum otium perduxerunt. Sic et crudelitatis infamiam effugerunt, quod urbem ex Italia pulcherrimam non sustulerunt, et multum in posterum providerunt, quod nervis omnibus urbe exsectis urbem ipsam solutam ac debilitatam reliquerunt. XXXIV. Haec consilia majorum M. Bruto, ut antea dixi, reprehendenda et P. Rullo visa sunt; neque te, P. Rulle, omina illa M. Bruti atque auspicia a simili furore deterrent. Nam et ipse qui deduxit, et qui magistratum Capuae * * * ceperunt, et qui aliquam partem illius deductionis, honoris, muneris attigerunt, omnes acerbissimas impiorum poenas pertulerunt. Et quoniam Bruti atque illius temporis feci mentionem, commemorabo

Rome B.C. 125 was punished by the Praetor L. Opimius, who destroyed the place. The war with Fregellae may have arisen from the same causes as the Marsic or Social war five and-thirty years later, which Cicero mentions next.

nervis—exsectis] 'Ejectis,' E. F. G. P. 'Exsectis' is the emendation of Nic. Angelius; and Baiter refers to Livy (7. c. 39), where some editions have 'nervos conjurationis ejectos arte consulis cernentes.'

34. *et P. Rullo*] Baiter says of these words, "insiticia mihi videntur." Perhaps they are.—'omina:' 'omnia,' E. F. A.; an obvious blunder, long since corrected.

magistratum Capuae] Baiter has 'magistratum Capuae illo creante' after Turnebus, which emendation perhaps comes the nearest to the MSS. readings and the sense of any that have been proposed.

Bruti atque illius temporis] Nothing is known of this 'colonia' of Brutus; and Cicero is not clear. But he tells us that all who took a part in this 'colonia' were punished as they deserved. It is probable that they were destroyed by Sulla. There is a notice in the Liber Coloniarum (p. 231, ed. Lach.) which seems to throw a little light on this obscure passage: "Capua, muro ducta colonia Julia Felix jussu imperatoris Caesaris a viginti viris est deducta. iter populo debetur ped. C. ager ejus lege Sullana fuerat adsignatus: postea Caesar in jugeribus militi pro praemio dividi jussit. Calatia oppidum. muro ducta. iter populo debetur ped. LX. coloniae Capuensi a Sulla Felice cum territorio suo adjudicatum olim ob hosticam pugnam." According to this authority Sulla did grant the land of Capua; and yet Cicero has said (c. 29) that Sulla did not dare to touch it. Now, there is some dishonesty in Cicero's statement. He is not telling the exact truth. That Sulla did not dare to touch the land of Campania is an absurd assertion. The man dared to do any thing, and he did just as he liked. No tyrant yet that the world has seen ever trampled on a people with more scorn and contempt. The work of Brutus in founding a 'colonia' at Capua was undone by somebody; perhaps by Sulla. It is conjectured that M. Brutus is the father of the

id quod egomet vidi, quum venissem Capuam coloniam deductam L. Considio et Sext. Saltio, quemadmodum ipsi loquebantur, praetoribus, ut intelligatis quantam locus ipse afferat superbiam, quae paucis diebus quibus illo colonia deducta est perspici atque intelligi potuit. Nam primum, id quod dixi, quum ceteris in coloniis duumviri appellentur, hi se praetores appellari volebant. Quibus primus annus hanc cupiditatem attulisset, nonne arbitramini paucis annis fuisse consulum nomen appetituros? Deinde anteibant lictores, non cum baculis, sed, ut hic praetoribus anteeunt, cum fascibus duobus. Erant hostiae majores in foro constitutae, quae ab his praetoribus de tribunali, sicut a nobis consulibus, de consilii sententia probatae, ad praeconem et ad tibicinem immolabantur.

man M. Junius Brutus, who was one of Caesar's assassins; and he is the tr. pl. mentioned in the oration Pro P. Quintio, c. 20. This Brutus the father of the assassin was put to death by Cn. Pompeius Magnus (Plutarch, Pompeius, c. 16; Appian, B. C. ii. 111). Immediately after Sulla's death Lepidus, who was trying to get power, raised a large part of Italy, and held Cisalpine Gallia with an army under the command of Brutus. It is uncertain whether Brutus surrendered himself or was betrayed by his men. However, he fell into Pompeius' hands, who put him to death. The terms in which Cicero speaks of Brutus and his associates are very consistent with the servility which he shows to Pompeius in this oration. Pompeius had been blamed for the death of Brutus, but Cicero says that Brutus deserved his fate. It is true that Cicero was afterwards very intimate with Brutus the assassin, but that is no sufficient reason for supposing that the colonizer of Capua might not be the assassin's father, for Brutus the assassin was more than twenty years younger than Caesar, and their intimacy was of later date than the time when this oration was delivered (Orelli, Onomastic.).

Whatever was done by Brutus in colonizing Capua, it is certain that Capua was Caesar's 'colonia,' and it was considered to be a new settlement. It would be very easy to declare all previous attempts at settling this land null on account of religious informality or other reason. Cicero's object was to keep the Campanian land, and to say as little as he could of the attempts made to appropriate it. Cicero himself visited Capua soon after the colonization, when the two men whom he mentions, Considius and Saltius, whose title as the 'magistratus' of Capua would be Duumviri, probably assumed the title of Praetores, like Horace's man at Fundi, the Praetor Aufidius Luscus. The short authority of these Praetores of Capua is shown by the words 'Quibus primus,' &c. They did not live to see a second year.

baculis,] E. Baiter has 'bacillis.' Staves, it seems, rods, wands, sticks, whether black or white or gilded or plain it is not said, were carried before the Duumviri. But these two impudent fellows had 'fasces' carried before them. As Cicero has just said, they deserved all that they got. Horace's Praetor of Fundi (I. Sat. 5. v. 35) has a 'prunae batillum,' charcoal for a sacrifice perhaps. Some critics have supposed that 'batillis' might be the true reading in Cicero. I think not.

hostiae majores] They affected to make a solemn sacrifice as at Rome, and then the Patres were summoned. Livy (31. c. 6): "Senatus decrevit uti consules majoribus hostiis rem divinam facerent."

praeconem et tibicinem] A 'praeco' to give notice to the people to be quiet; and a 'tibicen' to play his 'tibia,' before the sacrifice or while it was going on. He made the music, such as it was. (See Varro, De R. R. iii. 17.) The 'tibicines' at Rome were a large body, a kind of 'collegium.' Livy (9. c. 30) has a story of their moving off to Tibur because the Censors had cut off one of their old rights. It was a matter of eating, as we might suppose. They had been accustomed to dine in the temple of Jupiter, and probably had misbehaved themselves; for they were a drunken set. (Compare Livy, 9. c. 30, and Ovid, Fasti, vi. 657; and Livy, i. 43. on the 'centuriae' of the Cornicines and Tibicines.) One might almost suppose that Virgil had no

Deinde patres conscripti vocabantur. Jam vero vultum Considii videre ferendum vix erat. Quem hominem, vegrandi macie torridum, Romae contemptum atque abjectum videbamus, hunc Capuae Campano supercilio ac regio spiritu quum videremus, Blossios mihi videbar illos videre ac Jubellios. Jam vero qui metus erat tunicatorum illorum; et in Albana et Seplasia quae concursatio percontantium quid praetor edixisset? ubi caenaret? quid enuntiasset? Nos autem qui hinc Roma veneramus, jam non hospites, sed peregrini atque advenae nominabamur. XXXV. Haec qui prospexerint, majores nostros dico, Quirites, non eos in deorum immortalium numero venerandos a nobis et colendos putatis? Quid enim viderunt? hoc, quod nunc vos, quaeso, perspicite atque cognoscite. Non ingenerantur hominibus mores tam a stirpe generis ac seminis quam ex iis rebus, quae ab ipsa natura nobis ad vitae consuetudinem suppeditantur, quibus alimur et vivimus. Karthaginienses, fraudulenti et mendaces, non genere, sed natura loci, quod propter portus suos multis et variis mercatorum et

liking for these fellows, as he says of a 'tibicen:'—

"Inflavit quum pinguis ebur Tyrrhenus ad aras." (Georg. ii. 193).

Blossios] These were Campanian names well known (Livy, 27. c. 3, 7; 26. c. 15), and men of spirit. Ti. Gracchus had a friend Blossius, whom Plutarch calls 'an Italian from Cumae' (Ti. Gracchus, c. 8).

tunicatorum] The common sort, the lower classes, as we call them,—the people in jackets. These men assembled in the public places or chief streets of Capua (in Albana et Seplasia), and talked about the great folks. They inquired "what was the last 'edictum,' where the Praetor was supping, and what he had declared to be his pleasure;" for this may be the meaning of 'quid enuntiasset.' Baiter follows Klotz, who writes 'quo denuntiasset.' 'Cui denuntiasset' has been suggested, which is supposed to mean 'whom had he invited?' I think they hardly asked the last question; for the answer was certain that he had invited none of the men in jackets, and they would not concern themselves about other people.

hinc Roma] 'Roma,' says Baiter, is justly suspected by somebody or other mentioned by Lauredanus, and by Bake, *Schol. Hypomn.* iv. p. 75. Critics are a most suspicious set of men; they are always on the look out to show their cleverness by doubting where they should not doubt. Lauredanus himself had too much good sense to be misled by the men whom he mentions. He gives two excellent reasons for not troubling 'Roma.' Such a sample of good sense is refreshing: "Nos ideo non delevimus, quod in antiquis libris eam vidimus; et quia Cicero, quamvis satis esset dicere, *hinc*, ut significantius esset, addidit, *Roma*, ut nomen Romae Capuae nomini opponat."

35. *Karthaginienses,*] If his reasons are good, they must be good now: and they are. For eagerness after gain is certainly one of the chief causes of fraud. Perhaps it may be useful to remark that 'multis—sermonibus' is not the thing by which they were invited to fraud; but it was the eagerness for money which made them cheat. A translation would be absurd which connected 'multis—sermonibus' with 'vocabantur;' and could not be made, if people would look at the words in the right order, which is the author's order. Cicero says that "by reason of having many ports to which merchants and strangers of many and various languages resorted, they were led to practise fraud through the love of gain." This ablative form 'multis—sermonibus' is much used in the Latin language, and it is easier to understand than to explain. The following passage of Cæsar may be compared with this: "Summaque erat vasto atque aperto mari, magnis aestibus, raris ac prope nullis portibus, difficultas navigandi" (B. G. iii. 12).

advenarum sermonibus ad studium fallendi studio quaestus vocabantur. Ligures [montani] duri atque agrestes. Docuit ager ipse nihil ferendo nisi multa cultura et magno labore quaesitum. Campani semper superbi bonitate agrorum, et fructuum magnitudine, urbis salubritate, descriptione, pulchritudine. Ex hac copia atque omnium rerum affluentia primum illa [capta sunt]: arrogantia, quae a majoribus nostris alterum Capua consulem postulavit; deinde ea luxuries, quae ipsum Hannibalem armis etiam tum invictum voluptate vicit. Huc isti decemviri quum ɪↄↄ colonorum ex lege Rulli deduxerint, centum decuriones, decem augures, sex pontifices constituerint, quos illorum animos, quos impetus, quam ferociam fore putatis? Romam in montibus positam et convallibus, caenaculis sublatam atque suspensam, non optimis viis, angustissimis semitis, prae sua Capua, planissimo in loco explicata, ac prae illis semitis irridebunt atque contemnent; agros vero Vaticanum et Pupinium cum suis opimis atque uberibus campis conferendos scilicet non putabunt. Oppidorum autem finitimorum illam copiam cum hac per risum ac jocum contendent: Labicos, Fidenas, Collatiam, ipsum hercle Lanuvium, Ariciam, Tusculum cum Calibus, Teano, Neapoli, Puteolis, Cumis, Pompeiis, Nuceria comparabunt. Quibus illi rebus elati et inflati, fortasse non continuo, sed certe, si paullum assumpserint venustatis ac roboris, non continebuntur;

Ligures] Pro Cluentio, c. 26.—E. F. P. have 'Ligures' only. The mountaineers of Italy were the warlike population:—

> "Haec genus acre virum Marsos pubemque Sabellam,
> Assuetumque malo Ligurem."
> (Virg. Georg. ii. 167.)

capta sunt] I suppose this is the reading of the MSS., for Baiter's note is this: "*Capta*, E. F. P. (Madvig ad Cic. de Finn. p. 664); '*apta*,' A. Emendavit Nic. Angelius." For 'capta sunt' he writes 'nata est,' which is very easy to write and quite intelligible; and equally certain that it is not what Cicero wrote, if the MSS. are to be the evidence of what he wrote, and I know no other. I do not know that 'capta sunt' is genuine. I think that it may be. I have retained 'quae—Capua consulem postulavit,' because it seems that 'quae' ought to be the nominative to 'postulavit;' but 'Capua' is not easily explained. This demand about the consulship is in Livy (23. c. 6); but though he found the statement in certain Annales, he gives a reason for doubting its truth.

decuriones,] The Curia, the senate of the 'colonia.' The contrast between Rome, a poorly built place on irregular ground, and the fine level site of Capua, is well expressed. The houses at Rome were high: the 'caenacula' were at the top, and in Cicero's time the poor occupied them. "Rarus venit in caenacula miles," says Juvenal (Sat. x. 18). He also says (iii. 193):—

> "Nos urbem colimus tenui tibicine fultam
> Magna parte sui."

This explains 'sublatam atque suspensam.' It seems that the houses at Rome at this time were slightly built.

prae illis semitis] This seems to be corrupt. 'Nos,' that is, Baiter has made out of it, 'praeclarissime sita.' Klotz has made 'praeclarissimis viis.'

Vaticanum] The Vaticanus and the surrounding country was poor. The Pupinius, or Pupiniensis (Livy 9. c. 41), or Pupinia (26. c. 9), was also poor. M. Atilius Regulus is said to have had his farm in the Pupinia (Columella, i. 2, 4). Cicero contrasts the poor decayed towns about Rome with the rich towns of Campania.

venustatis] E. F. P.: 'vetustatis,' Baiter; but I do not know what is the

progredientur, juncti secum ferentur. Singularis homo privatus, nisi magna sapientia praeditus, vix facile sese regionibus officii magnis in fortunis et copiis continet; nedum isti ab Rullo et Rulli similibus conquisiti atque electi coloni, Capuae in domicilio superbiae atque in sedibus luxuriae collocati, non statim conquisituri sint aliquid sceleris et flagitii. Immo vero etiam hoc magis quam illi veteres germanique Campani, quod in vetere fortuna illos natos et educatos nimiae tamen rerum omnium copiae depravabant; hi ex summa egestate in eandem rerum abundantiam traducti non solum copia verum etiam insolentia commovebuntur.

XXXVI. Haec tu, P. Rulle, M. Bruti sceleris vestigia quam monumenta majorum sapientiae sequi maluisti: haec tu cum istis tuis auctoribus excogitasti, ut vetera vectigalia * * * ea expleretis novo * * * urbi ad certamen dignitatis opponeretis: ut sub vestrum jus, jurisdictionem, potestatem urbes, nationes, provincias, liberos populos, reges, terrarum denique orbem subjungeretis: ut quum omnem pecuniam ex aerario exhausissetis, ex vectigalibus redegissetis, ab omnibus regibus, gentibus, ab imperatoribus nostris coegissetis, tamen omnes vobis pecunias ad nutum vestrum penderent: ut iidem partim invidiosos agros a Sullanis possessoribus, partim desertos ac pestilentes a vestris necessariis et a vobismetipsis emptos, quanti velletis populo Romano induceretis: ut omnia municipia coloniasque Italiae novis colonis occuparetis: ut quibuscumque in locis vobis videretur ac quam multis videretur colonias collocaretis: ut omnem rem publicam vestris militibus, vestris urbibus, vestris praesidiis cingeretis atque oppressam teneretis: ut ipsum Cn. Pompeium, cujus praesidio saepissime populus Romanus contra acerrimos hostes et contra improbissimos cives * * * victorem atque horum conspectu privare possetis: ut nihil

authority for it. 'Venustatis' may be right.

progredientur—ferentur] This is the reading of E. F. P., except that P. has 'cuncti,' and F. has both verbs in the present, and E. has only 'progrediuntur,' the present. Baiter's reading is 'progredientur longius, efferentur.' Orelli (comparing Livy 40. c. 49) has 'progredientur, cuncta secum ferent.' We may doubt if the MSS. reading is right. We are certain that Baiter's reading is not Cicero's text.

36. *M. Bruti sceleris*] His crime was his unsuccessful attempt to colonize Capua, for which he was punished (c. 34). There is no evidence of his crime in Cicero except his unsuccessful attempt. Caesar, a few years after, succeeded in colonizing Capua, which did not prevent Cicero from being his most excellent friend (Ad Att. iv. 18), for a time.

auctoribus] Lauredanus: 'actoribus,' E. F. G. A. The words from 'ea' to 'novo' are corrupt, or something has been omitted. The city which is to be opposed to Rome is Capua; and some editions insert Capuam after 'urbi.'

victorem] Ussing suspects that 'usus est spoliare' has fallen out between 'cives' and 'victorem.' The words fill up the

auro et argento violari, nihil numero et suffragiis declarari, nihil vi ac manu perfringi posset quod non vos oppressum atque ereptum teneretis: ut volitaretis interea per gentes, per regna omnia, cum imperio summo, cum judicio infinito, cum omni pecunia: ut veniretis in castra Cn. Pompeii, atque ipsa castra si commodum vobis esset venderetis: ut interea magistratus reliquos, legibus omnibus soluti, sine metu judiciorum, sine periculo petere possetis: ut nemo ad populum Romanum vos adducere, nemo producere, non senatus cogere, non consul coercere, non tribunus plebis retinere posset.

Haec ego vos concupisse pro vestra stultitia atque intemperantia non miror; sperasse me consule assequi posse demiror. Nam quum omnium consulum gravis in re publica custodienda cura ac diligentia debet esse, tum eorum maxime, qui non in cunabulis, sed in campo sunt consules facti. Nulli populo Romano pro me majores mei spoponderunt: mihi creditum est: a me petere quod debeo, me ipsum appellare debetis. Quemadmodum quum petebam nulli me vobis auctores generis mei commendarunt, sic, si quid deliquero, nullae sunt imagines quae me a vobis deprecentur. XXXVII. Quare modo si vita suppetat, quam ego summis * * * ab istorum scelere insidiisque defendere, polliceor hoc vobis, Quirites, bona fide: rem publicam vigilanti homini non timido, diligenti [non ignavo] commisistis. Ego is consul qui contionem metuam? qui tribunos plebis perhorrescam? qui saepe et sine caussa tumultuer? qui timeam ne mihi in carcere habitandum sit, si tribunus

blank very well; but that does not prove that they are Cicero's. There is no trace of them in the MSS.

in cunabulis,] He was not made a consul in the cradle, as he would say that those nobles were, who were elected because of the merit of their ancestors. He then passes on to a metaphor from suretyship: he had no 'sponsores,' nobody to promise payment, if he could not pay. Credit was given to him only, and not to him and his 'sponsores.' The Roman people must call on him alone for payment. Compare Ad Att. i. 10: "Tulliola tibi diem dat: sponsorem appellat."

si quid—deprecentur.] Quoted by Gellius (vi. 16), where he is examining the different meanings of 'deprecari.' One meaning is "valde precari, et orare, et supplicare," which is the meaning here. The other signification is "abigere, amoliri vel prece adhibita vel quo alio modo," as in the Pro Caecina, c. 10; and in the Verrine orations: "Nunc vero quid faciat Hortensius? avaritiaene crimina frugalitatis laudibus deprecetur?"

37. *modo si*] E. F. P.: 'modo ut,' G. A.: '*modo* nos' (Baiter). 'Modo' only will do; but Cicero preferred the form 'modo si' or 'modo ut,' which is more complete—'modo ut possem' in Terence.—'quam ego summis:' something is lost here.—'non ignavo' is not in the MSS. It is the addition of Hervagius. Something is wanted.

si tribunus plebis] 'Duci' is the word used on such occasions. The tribuni pl. had the power of arresting any 'magistratus' except a Dictator. Marquardt (Becker's *Handbuch*, &c. ii. 2. p. 284) refers to the several passages in which this authority of the tribuni is mentioned, and to this passage among the rest. He refers also to Cicero (De Legg. iii. 9), who speaks of an instance of this power of the tribunes

plebis duci jusserit? Ego enim vestris armis armatus insignibusque amplissimis exornatus, imperio, auctoritate, non horrui in hunc locum progredi vobisque auctoribus improbitati hominis resistere; nec vereor ne res publica tantis munita praesidiis ab istis

being exercised as the first occasion; which, as the writer justly remarks, "is a new proof of his ignorance of the history of old times."

The Tribunician power is unintelligible, unless we look to its origin and its purpose, which will help us to understand its abuse too. The tribunes stood between the Senate and the Plebs; they resisted the insolence of the nobles; through them the Plebs had a share in the administration; they were the guardians of liberty, which they finally betrayed. But they did the work for which they were made; they protected a people against a nobility, whose tyranny knows no bounds except those which they cannot pass. This is the very essence of the dominion of a few, to use their power and to abuse it. The men are as good as other men; often better. What they do by virtue of the power which they have, is not their act; it is the essence of their nature as the possessors of power. The hostility of the people and the nobles made Rome great, as Machiavelli shows. When a nobility and a people stand face to face, they must be hostile, or the State will be weak. This disunion does not destroy a State: it is the conservation of liberty; it is the life of a State; it made Rome the conqueror of the world; for a State which is turbulent at home by virtue of its internal energy, is tranquillized by making its power felt abroad. The strongest State is not a State which is quiet. The unrest within is the sign of its strength. How can there be rest where there is life?

The tribunate at Rome was the mother of Roman eloquence. The tribune's voice (tribunitia vox) was the power of the people. It is the word spoken and written that governs the world. That which is mute cannot govern. A Roman who could not speak to a popular assembly was nothing. The Roman tribunate was freedom of speech; and freedom of speech is the same as freedom of printing. In Rome freedom of speech was liberty: in modern times liberty is freedom of printing. Without this freedom there is now no safety against the tyranny of one, of a few, or of many. But the word of the press may be as foolish and as dishonest as the voice of the tribune often was, and do more harm because it is heard further. Who then must guard the guardian of liberty?

Caesar tells us (B. G. vi. 20) that in Gallia, no man could speak on public affairs except in the great council. The voice of a tribune was never heard out of doors. Every man's mouth was shut for fear that talk might lead to action, and action to the disturbance of the commonwealth. Gallia had no life in the members of its body. She was the slave of nobles, of priests, and of usurpers; and she became the slave of Rome. She had men, and arms, and courage, and ability; but she had not that which makes a nation great, the free expression of her wants, the internal activity which is the life of man and the life of a people.

Ego enim] G.: 'Ego cum,' E. F. P. A. Some editions have 'Ego nondum,' in which there is no meaning.—'volueritis: 'volueratis,' Baiter.—'quibus otiosi otium fecissemus aeque:' 'quibus otiosi otium fecissemus (facessimus, P.) atque otiosos,' E. F. G. P. Klotz, so far as I know, is the only modern editor who has stuck to the text; for the change of 'atque' into 'aeque' is nothing; though Turnebus does not seem to have altogether rejected 'otium fecissemus.' Baiter has 'quibus odio est otium, aeque otiosos reddam.' Other alterations have been made, but they are not worth mentioning. The worst is 'negotium facessimus,' the emendation of Sigonius, which is entirely without meaning. I do not know if 'alicui otium facere' occurs elsewhere; but I see no difficulty in believing it to be Latin, even if it is not found elsewhere. Cicero is here making a miserable play on words, as he often does, and he is nearly always obscure when he does it. If, then, the meaning is not quite clear, the words may still be his. He says that the Roman people shall enjoy tranquillity, as they have always wished; and he will make the agitators as quiet as the people. He clearly implies that the Roman people are not quiet now. Then comes interposed 'quibus . . . fecissemus,' "to whom, if you had been quiet, you would have given quiet," or the opportunity to do what they wish. But your agitation has deprived them of the quiet in which they would have done their work, if they could.

vinci aut opprimi possit. Si antea timuissem, tamen hac contione, hoc populo, certe non vererer. Quis enim umquam tam secunda contione legem agrariam suasit quam ego dissuasi? si hoc dissuadere est, ac non disturbare atque pervertere. Ex quo intelligi, Quirites, potest, nihil esse tam populare quam id quod ego vobis in hunc annum consul popularis affero, pacem, tranquillitatem, otium. Quae nobis designatis timebatis, ea ne accidere possent consilio meo ac ratione provisa sunt. Non modo vos eritis in otio, qui semper esse volueritis, verum etiam istos, quibus otiosi otium fecissemus, aeque otiosos reddam. Etenim illis honores, potestates, divitiae ex tumultu atque ex dissensionibus civium comparari solent: vos, quorum gratia in suffragiis consistit, libertas in legibus, honos in judiciis et aequitate magistratuum, res familiaris in pace, omni ratione otium retinere debetis. [* * * *
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* * *] Idem tribunis plebis denuntiavi, ne quid turbulenti me consule conflarent. Summum et firmissimum est illud communibus fortunis praesidium, Quirites, ut quales vos hodierno die maxima contione mihi pro salute vestra praebuistis, tales reliquis temporibus rei publicae praebeatis. Pro certo polliceor hoc vobis atque confirmo me esse perfecturum, ut jam tandem illi qui honori inviderunt meo, tamen vos universos in consule deligendo plurimum vidisse fateantur.

magistratuum, res familiaris] Lauredanus. It is not all Cicero's text. The MSS. are corrupt in this place. The whole peroration has been spoiled in the copying. The following sentence is all in confusion in the MSS., and the critics have had full play. One does not know what to do with it. I copy the whole as it stands in Baiter, without giving the authority for each correction: "Nam si ii, qui propter desidiam in otio vivunt, tamen in sua turpi inertia capiunt voluptatem ex ipso otio, quam vos fortunati eritis, si hunc statum quem habetis, non ignavia quaesitum, sed virtute partum tenueritis: quod ego ea concordia, quam mihi constitui cum collega, invitissimis iis hominibus, qui nos in consulatu inimicissimos fore † actibus providi omnibus prospexi sane revocavi." After trying to exhibit in the text something like the MSS. readings, so far as I can make them out, I have given it up; and the reader must fill up the gap with Baiter's text, which is in this note. I do not choose to print in the text a piece of modern patchwork and pass it off for Cicero.

Cicero's colleague was C. Antonius Hybrida, of whom we read a good deal in Cicero. He was afterwards proconsul of Macedonia. He was the son of a noble father, the orator M. Antonius, but a dishonest scandalous fellow, and Cicero well knew it. He made a coalition with Catiline, when he and Catiline and Cicero were competitors for the consulship; and Cicero abused both of them well in his Oration In Toga Candida, Ascon. p. 83, ed. Orelli.

ne quid] 'ne' was added by Turnebus. He says 'forte,' 'perhaps.' It seems to be wanted.

M. TULLII CICERONIS

DE

LEGE AGRARIA

CONTRA

P. SERVILIUM RULLUM, TR. PL.

ORATIO TERTIA,

AD POPULUM.

I. Commodius fecissent tribuni plebis, Quirites, si quae apud vos de me deferunt, ea coram potius me praesente dixissent; nam et aequitatem vestrae disceptationis, et consuetudinem superiorum, et jus suae potestatis retinuissent. Sed quoniam adhuc praesens certamen contentionemque fugerunt, nunc si videtur eis, in meam contionem prodeant, et quo provocati a me venire noluerunt, revocati saltem revertantur. Video quosdam, Quirites, strepitu significare nescio quid, et non eosdem vultus quos proxima mea contione praebuerunt in hanc contionem mihi rettulisse. Quare a vobis, qui nihil de me credidistis, ut eam voluntatem quam semper habuistis erga me retineatis peto; a vobis autem, quos leviter immutatos esse sentio, parvam exigui temporis usuram bonae de me opinionis postulo, ut eam, si quae dixero vobis probabo, perpetuo retineatis; sin aliter, hoc ipso in loco depositam atque abjectam relinquatis. Completi sunt animi auresque vestrae, Quirites, me gratificantem septem tyrannis ceterisque Sullanarum assignationum possessoribus, agrariae legi et commodis vestris obsistere. Hoc si qui crediderunt, illud prius crediderint necesse est, hac lege agraria quae promulgata est adimi Sullanos agros vobisque dividi, aut denique

1. *septem*] Some seven men who held large pieces of land. Turnebus conjectures their names.

adimi—minui] He speaks of two kinds of land, of land assigned by Sulla to men whom he calls 'Sullanarum assignationum possessoribus,' and of public land held by private persons (privatorum possessiones) on which settlers might be planted. Again in the next chapter he uses the expression "aliquam similitudinem propriae possessionis." This shows that the meaning of 'possessio' is not limited to the 'possession' of public land. Turnebus knew this: "Possessiones interdum vocantur agri late patentes, iique vel publici vel privati." In order

minui privatorum possessiones ut in eas vos deducamini. Si ostendo non modo non adimi cuiquam glebam de Sullanis agris, sed etiam genus id agrorum certo capite legis impudentissime confirmari atque sanciri; si doceo agris his qui a Sulla sunt dati, sic diligenter Rullum sua lege consulere, ut facile appareat, eam legem non a vestrorum commodorum patrono, sed a Valgii genero esse conscriptam, numquid est caussae, Quirites, quin illa criminatione qua in me absentem usus est, non solum meam sed etiam vestram diligentiam prudentiamque despexerit?

II. Caput est legis quadragesimum de quo ego consulto, Quirites, neque apud vos ante feci mentionem, ne aut refricare obductam jam rei publicae cicatricem viderer, aut aliquid alienissimo tempore novae dissensionis commovere. Neque vero nunc ideo disputabo, quod hunc statum rei publicae non magno opere defendendum putem, praesertim qui otii et concordiae patronum me in hunc annum populo Romano professus sim, sed ut doceam Rullum posthac in his saltem tacere rebus, in quibus de se et de suis factis taceri velit. Omnium legum iniquissimam dissimillimamque legis esse arbitror eam, quam L. Flaccus interrex de Sulla tulit, ut omnia quaecumque ille fecisset essent rata. Nam quum ceteris in civitatibus tyrannis institutis leges omnes exstinguantur atque tollantur, hic rei publicae tyrannum lege constituit. Est invidiosa lex, sicuti dixi: verumtamen habet excusationem; non enim videtur hominis lex esse sed temporis. Quid si est haec multo impudentior? Nam Valeria lege Corneliisque legibus eripitur cui datur; conjungitur

to express ownership Cicero has used the word 'propria possessio;' but 'propria' really adds nothing to the idea; for any 'possessio' is 'propria,' or it is not 'possessio.' 'Proprius' is peculiar, singular, what belongs to an individual; it is opposed to 'communis.'—'agris his:' 'agris iis,' Baiter.

2. *quadragesimum*] The Lex contained at least forty chapters (capita). We divide our Leges, Acts of Parliament, the same way, but the Roman chapters are shorter than our sections generally are, and better expressed. Still they rather labour under a superfluity of words.

He says that he will discuss this matter now, not because he would disturb what Sulla did, but to teach Rullus to say nothing about a matter which he wishes to be kept silent. After Sulla's death Catulus and Lepidus attempted to undo many of his measures, but Cicero says that such an attempt at the present time would be very much out of season.

L. Flaccus] L. Valerius Flaccus, a praetor in the time of Sulla, was made 'interrex' after the death of the consuls Marius and Carbo (B.C. 82), and named Sulla Dictator. The Lex of Flaccus gave Sulla unlimited power (Pro Sex. Roscio, c. 43; De Legg. i. 15; Appian, B. C. i. 97; Plutarch, Sulla, c. 33).

cui datur;] 'cui,' F. G. A.: 'civi,' E. P. 'Cum, ed. Aldina,' Baiter. 'Cui' seems to be the true reading, the reading of the MSS.; and perhaps Cicero wrote it so. Cicero is not speaking literally. He says that by the Leges of Valerius and Sulla "land is taken away from him to whom it is given; a shameless grant of land is connected with a grievous wrong: but still these Leges leave some hope to the man from whom land has been taken, and some uneasiness to him to whom it has been given." It is an oratorical way of speaking. Something is said obscurely, and room is left for explanation and amplification. The MSS.

impudens gratificatio cum acerba injuria: sed tamen habet in illis legibus spem nonnullam cui ademptus est, aliquem scrupulum cui datus est. Rulli cautio est haec, QUI POST C. MARIUM CN. PAPIRIUM CONSULES. Quam procul a suspicione fugit, quod eos consules, qui adversarii Sullae maxime fuerunt, potissimum nominavit? Si enim Sullam dictatorem nominasset, perspicuum fore et invidiosum arbitratus est. Sed quem nostrum tam tardo ingenio fore putavit, cui post eos consules Sullam dictatorem fuisse in mentem venire non posset? Quid ergo ait Marianus tribunus plebis, qui nos Sullanos in invidiam rapit? QUI POST MARIUM ET CARBONEM CONSULES, AGRI, AEDIFICIA, LACUS, STAGNA, LOCA, POSSESSIONES (caelum et mare praetermisit, cetera complexus est), PUBLICE DATA, ASSIGNATA, VENDITA, CONCESSA SUNT. A quo, Rulle? Post Marium et Carbonem consules quis assignavit, quis dedit, quis concessit praeter Sullam? EA OMNIA EO JURE SINT. Quo jure? labefactat videlicet nescio quid. Nimium acer, nimium vehemens tribunus plebis Sullana rescindit. UT QUAE OPTIMO JURE PRIVATA SUNT. Etiamne meliore quam paterna et avita? Meliore. At hoc Valeria lex non dicit: Corneliae leges non sanciunt: Sulla ipse non postulat. Si isti agri partem aliquam juris, aliquam similitudinem propriae possessionis, aliquam spem diuturnitatis attingunt, nemo est tam impudens istorum quin agi secum praeclare arbitretur. Tu vero, Rulle, quid quaeris? Quod habent ut habeant? quis vetat? Ut privatum? Sed ita latum est, ut melior tui soceri fundus Hirpinus sit, sive ager Hirpinus, totum enim possidet, quam meus paternus avitus-

have 'ademptus,' 'datus,' which we can easily refer to 'ager,' for 'qui' comes soon after. Puteanus has 'ademptum,' 'datum.' By this chapter Rullus only attempted to do that which Cicero himself would do. Cicero would not disturb the 'Sullani homines,' and Rullus would confirm their titles. What is the difference? That Rullus was more honest than Cicero in this matter. No doubt the Tribune in his address to the people had put Cicero in a difficulty. He must say whether he would disturb the titles of Sulla's men or not. Cicero now says that he would not; but he blames Rullus for confirming them. Cicero's argument against Rullus is very weak. Rullus dates the effect of his Lex from the consulship of Marius and Carbo, because it was necessary to fix a time, and the Romans fixed a time by the years of the consuls. If the trick of Rullus in not naming Sulla was so manifest, who could fail to perceive it, as Cicero says? And if so, where was the trick? He next calls him 'Marianus tribunus,' because the operation of his Lex dates from the consulship of Marius. Rullus assumes the character of a man of the Marian party to bring popular indignation upon Cicero and others as partizans of Sulla. All this is very feeble.

labefactat videlicet] "I suppose he is going to disturb titles a little." And he continues in the same sarcastic tone: "Too active, too impetuous; this tribune is rescinding Sulla's settlement." But he is doing nothing of the kind, for his Lex declares that all that Sulla gave, or granted, shall be held on as good terms as those lands which are held on the best terms (optimo jure). The MSS. have PRIVATA SINT. Turnebus made the correction.

Hirpinus,] 'Irpinus,' Baiter; who adds 'Cf. Festum, p. 78. ed. Lindem.'—'ut privatum sit? ita latum est:' Baiter.

que fundus Arpinas. Id enim caves. Optimo enim jure ea sunt profecto praedia quae optima conditione sunt. Libera meliore jure

optimo—jure] Here the orator begins to talk in a way which is intended to deceive. When Rullus proposed to enact that the lands given or granted in Sulla's time should be "eo jure, ut quae optimo jure privata sunt," he meant no more than that the title should be complete against the State. But Cicero gives it another meaning. Lands which are free (libera) from all 'servitutes' are not held by any better title than land which owes 'servitutes' (serva); but the land is more valuable, because the enjoyment of the ownership is free from all limitation. When one piece of land is servient to another (servit, servum est), the owner of the servient land must either allow something, which otherwise, by virtue of his ownership, he would not; for instance, allow another man to have a road over his ground; or he must refrain from doing something, which as owner he otherwise could do; for instance, he must not raise his house higher for fear of damaging his neighbour's prospect. The law on this matter is in the Digest (Lib. viii. Tit. 1, &c.), from which we have taken all that we have.

Again, Cicero takes the case of land or property free from all claims of hypothecation (soluta), for 'obligata' (bound) implies hypothecation. There may be other cases where the land is bound; but this is the simplest. Cicero argues that the Lex of Rullus will put an end to claims of the mortgagee of land; a false conclusion, and so absurd that one may say with him, "quis nostrum tam tardo ingenio est quin hoc non videat?"

Again, he treats of land which is 'immunis,' pays no 'vectigal,' which is a better condition than that of land which pays the 'vectigal.' Cicero supposes the case of his paying to the municipium of Tusculanum a certain sum annually for the use of the Aqua Crabra in respect of his land at Tusculum; and then he wishes us to conclude that if he had got the land by Sulla's gift, the Lex of Rullus would free him from payment of the 'vectigal' for the water. This conclusion is no conclusion. It is a palpable and foolish attempt to deceive his hearers. There is a passage on the Aqua Crabra in Frontinus (De Aquaeduct., Lib. i.): "Praeter caput Juliae transfluit aqua quae vocatur Crabra. Hanc Agrippa emisit, seu quia usum improbaverat, seu quia Tusculanis possessoribus relinquendam credebat Ea namque est quam omnes villae tractus ejus per vicem indies modulosque certos dispensatam accipiunt, sed non eadem moderatione.—Exclusa ergo est Crabra et tota jussu Imperatoris reddita Tusculanis." Cicero speaks of the Crabra again (Ad Div. xvi. 18). It is supposed to be La Marrana, a small brook of muddy water which comes from the Alban hills, flows through Rome, and enters the Tiber. The water was used by the owners of land, who paid the town for it. The following very instructive extract is from one of Mommsen's Essays (Römische Urkunden, Zeitschrift für Gesch. Rechtsw. xv.): "In the Municipia was maintained the usage of the Republican period (Frontin. 94, 95); to manage for the benefit of the town-treasury the water which was not directly required for public purposes. The way in which the water was distributed appears from the fragment of the ground-plan of an aqueduct: we recognize the Rivus with its branches and with the Foramina in which the Calices and Fistulae were placed. Near to each Fistula there is an inscription after the following fashion:—

C. IVLI. HYMETI
AVFIDIANO
AQVAE. DVAE
AB HORA. SECVNDA
AD. HORAM. SEXTAM.

The name of the owner is first given in the genitive, then the name of the Fundus (Aufidianus) in the dative; then comes the number of 'aquae,' that is, of Fistulae aquariae, which were of a certain diameter, fixed by the 'lex aquaeductus;' and last, the determination of the number of hours daily during which the water was allowed to flow into the Fistulae. It is known that the flow of water was distributed by time and hours; where the number of hours is not given, as in the case of the Fundus Squaterianus of our inscription, the water flowed constantly. This plan, which without doubt belongs to the Augustan epoch, and which we suppose to refer not to a Roman, but to a municipal, perhaps a Tusculan or a Tiburtine aqueduct, is the living commentary on the words of Frontinus (c. 9) 'Tusculanis possessoribus,' &c.; to which we may add from Cicero (De Leg. Agr. iii. 2), that the owners of the Fundi paid a 'vectigal' to the municipium of Tusculum for the water. Another inscription resembling this was found at Tivoli. These aqueducts were not made to supply houses in a town, but to supply farms and villae."

sunt quam serva. Capite hoc omnia quae serviebant non servient. Soluta meliore in caussa sunt quam obligata: eodem capite obligata omnia si modo Sullana sunt liberantur. Immunia commodiore conditione sunt quam illa quae pensitant: ego Tusculanis pro aqua Crabra vectigal pendam, quia mancipio fundum accepi: si a Sulla mihi datus esset, Rulli lege non penderem. III. Video vos, Quirites, sicuti res ipsa cogit, commoveri vel legis vel orationis impudentia: legis, quae jus melius Sullanis praediis constituat quam paternis; orationis, quae ejusmodi caussa insimulare quemquam audeat rationes Sullae nimium vehementer defendere. Ac si illa solum sanciret quae a Sulla essent data tacerem, modo ipse se Sullanum esse confiteretur. Sed non modo illis cavet, verum etiam aliud quoddam genus donationis inducit; et is qui a me Sullanas possessiones defendi criminatur, non eas solum sancit, verum ipse novas assignationes instituit, et repentinus Sulla nobis exoritur. Nam attendite quantas concessiones agrorum hic noster objurgator uno verbo facere conetur: QUAE DATA, DONATA, CONCESSA, VENDITA. Patior: audio. Quid deinde? POSSESSA. Hoc tribunus plebis promulgare ausus est, ut, quod quisque post Marium et Carbonem consules possidet, id eo jure teneret quo qui optimo privatum? etiamne si vi ejecit? etiamne si clam, si precario venit in possessionem? Ergo hac lege jus civile, caussae possessionum, praetorum interdicta tollentur. Non mediocris res neque parvum sub hoc verbo furtum, Quirites, latet. Sunt enim multi agri lege Cornelia publicati, nec cuiquam assignati neque venditi, qui a paucis hominibus impudentissime possidentur. His cavet, hos

The word 'vectigal' occurs in the inscription of Venafrum in the same sense as here: "quaeque aqua in oppidum Venafranorum it fluit ducitur, eam aquam distribuere discribere vendundi causa aut ei rei vectigal imponere constituere." See Vol. I. Verr. ii. 3. c. 30.

quia mancipio] "Because I bought the land." As to 'mancipatio,' see Vol. I. Verr. ii. 3. c. 40, note. The false reading 'quia a municipio,' which is still in some texts of Cicero, dates from the Aldine edition.

3. *quae—constituat*] "Because it establishes."—'ejusmodi caussa:' 'ejus modi in causa,' Baiter. 'In' is not in the MSS.—'possidet:' E. F. A; 'possideret,' Ern., Baiter.

etiamne si vi] Cicero enumerates the three defects which vitiated 'possessio,' that is, deprived the possessor, whose 'possessio' was thus vitiated, of the benefit of the Interdict. (See Index.) Cicero affects to believe that the Lex altered the nature of possession; that a man who had got possession of any land in any way could keep it against another man under the Lex of Rullus. The Lex of Rullus would protect the possessors of public land, who had got hold of it without any other title than occupation. We might infer that the Lex did this; and Cicero says that it did. But his assumption that any possessor was to be protected against all the world, even if his 'possessio' originated 'vi,' 'clam,' or 'precario,' is absurd. The Romans knew the law of possession well; and we may wonder that Cicero made this assertion, but it would deceive some of his hearers, and that is enough for a man who addresses a crowd.—'vi ejecit:' 'vi dejecit,' Lamb., Baiter.

possidentur.] Here we have an instance of the use of 'possidere' to signify an occupation of public land, but used with the in-

defendit, hos privatos facit: hos, inquam, agros, quos Sulla nemini dedit, Rullus non vobis assignare vult, sed eis condonare qui possident. Caussam quaero cur ea, quae majores vobis in Italia, Sicilia, Africa, duabus Hispaniis, Macedonia, Asia reliquerunt, venire patiamini, quum ea quae vestra sunt condonari possessoribus eadem lege videatis.

Jam totam legem intelligetis, quum ad paucorum dominationem scripta sit, tum ad Sullanae assignationis rationes esse accommodatissimam. Nam socer hujus vir multum bonus est: neque ego nunc de illius bonitate, sed de generi impudentia disputo. IV. Ille enim quod habet retinere vult, neque se Sullanum esse dissimulat. Hic ut ipse habeat quod non habet, quae dubia sunt per vos sancire vult; et quum plus appetat quam ipse Sulla, quibus rebus resisto, Sullanas res defendere criminor. Habet agros nonnullos, inquit,

tention of keeping it too. Yet a man 'qui possedit' public land, knew that no 'possessio' could give him a title against the State, and he did not possess in the same sense in which a man 'possedit' private land. Both kinds of 'possessores' of land were entitled to an Interdict. But the Interdict which protected the possessor of public land, and the Interdict which protected the possessor of private land, agreed only in name and in nothing else. He who got possession of private land, was not only protected by the Interdict in his possession, if he possessed with the intention of keeping the land as his own: he could also acquire a title by usucapion, if he possessed 'pro suo,' if he had a 'justa caussa,' and possessed 'bona fide,' that is, with the belief that he had a good title to the land. A 'caussa possessionis' is a legal fact; it is the title to possess, which may be by purchase, by testament, by gift, and by other means.

Cicero has introduced great confusion by saying that if the 'possessores' of public land received a title to their land by this Lex of Rullus, which land up to the time when the Lex would take effect had been public land, the 'jus civile,' the 'caussae possessionum,' the Interdicts of the praetor would be destroyed. So long as this land was public, the rules that applied to the possession of private land could not apply to it. And if the Lex of Rullus made it private land by giving the 'possessores' a complete title against the State, the land would from that time be subject to all the rules of law which applied to private land. And this is the whole matter. All that Cicero really affirms is, that this public land would under the Lex of Rullus become private property (hos privatos facit). His conclusion, 'ergo hac lege,' is the part that is confused; and it is intended to be so. The only defence for him is that the terms of Rullus's Lex are so general, that he can affirm that they protect any man who in any way has got possession of any land since the consulship of Marius and Carbo. Whether the terms of the law were so general as Cicero represents them, we cannot tell, because we have not all the Lex before us; but the meaning of Rullus was certainly not that which Cicero imputes to him. Cicero himself would confirm the title to what Sulla gave, but not the title to what Sulla's men took. The Lex of Rullus may have gone too far in turning possession of public land into property; but as Cicero chooses to make the words which he cites mean more than they do mean, we can have no confidence in his statement of the words and the meaning of the Lex. The sections in Puchta's Institutiones (Vol. ii.) on legal possession (Juristischer Besitz) are very useful, and will help a reader to understand better this confused matter of 'possessio;' and the difference between the possession of public land and the possession of private land.

This is a long note on a matter which might be passed over without finding any difficulty: but the use of the note is to point out the difficulty, and to teach the reader that he may read without understanding; and what is worse, without knowing that he does not understand. And this is the way that Cicero's orations are generally read, and must be read till people will take the necessary pains to understand them.

4. *quibus—criminor.*] 'criminatur, P.

socer meus desertos atque longinquos: vendet eos mea lege quanti volet. Habet incertos ac nullo jure possessos: confirmabuntur optimo jure. Habet publicos: reddam privatos. Denique eos fundos, quos in agro Casinati optimos fructuosissimosque continuavit, quum usque eo vicinos proscriberet, quoad oculis continuando ex multis praediis unam fundi regionem formamque perfecerit, quos nunc cum aliquo metu tenet, sine ulla cura possidebit.

Et quoniam qua de caussa et quorum caussa ille hoc promulgaverit ostendi, doceat ipse, num ego quem possessorem defendam, quum agrariae legi resisto. Silvam Scantiam vendis. Populus Romanus possidet: defendo. Campanum agrum dividis. Vos estis in possessione: non cedo. Deinde Italiae, Siciliae ceterarumque provinciarum possessiones venales ac proscriptas hac lege video. Vestra sunt praedia, vestrae possessiones: resistam atque repugnabo, neque patiar a quoquam populum Romanum de suis

Manutius,' Baiter. But P. Manutius quotes Priscian, who says that 'osculor' and 'criminor' are used both actively and passively; and accordingly Manutius says that he willingly follows the MSS. which have 'defendere criminor.'—'quibus rebus:' the repetition of a noun with the relative is very common in the best Latin writers. It is sometimes done for emphasis' sake, sometimes for perspicuity. English taste in writing is directed by no fixed principle, and it is not surprising if repetition should be considered inelegant. It is certainly avoided by all people who do not know how to write. See Pro C. Rabirio, c. 13, note.

continuavit,] This is the odious term. He added field to field, one piece of land to another, "putting his neighbours on the lists of the proscribed, as far as his eyes could reach, till out of many estates he made one perfect tract and figure of an estate." This is very hard to render. I have given the meaning: others may do it better. I read with G. 'oculis continuando,' for he has already said 'continuavit.' T. has 'contuendo,' which may be simply a blunder for 'continuando.' E. F. P. A. have 'confirmando,' whence Gulielmius, followed by Baiter, has made 'conformando,' which is the true reading, if 'continuando' is not. 'Conformando' refers to 'formam.' 'Regio,' properly 'a direction,' is used to signify a large tract. 'Forma' is a term used by the Agrimensores. It occurs continually in these writers, and expresses the form, the boundaries, and consequently the whole surface of any land to which the term applies. There is an instructive passage in Siculus Flaccus (De Condic. Agr. i. 138. ed. Lachm.), where he is speaking of Occupatorii Agri: "Horum ergo agrorum nullum est aes, nulla forma, quae publicae fidei possessoribus testimonium reddat; quoniam non ex mensuris actis unusquisque [miles] modum accepit, sed quod aut excoluit aut in spem colendi occupavit, quidam vero possessionum suarum privatim formas fecerunt, quae nec ipsos vicinis nec sibi vicinos obligant, quoniam res est voluntaria." If a man made a 'forma' of the land that he occupied, it would neither be evidence for him nor against him. These 'formae' were generally on bronze, but sometimes on skins. Under the empire the 'sanctuarium Caesaris' was the great register-office of plans, and other records that concerned land (Siculus Flaccus, De Condic. Agr. ed. Lachm. p. 155). Valgius looked about him, and he made with his eyes a 'forma' which took in a whole district. Horace (II. Sat. 6, 8) represents the greedy man looking on his neighbour's land and coveting it:—

"O si angulus ille
Proximus accedat qui nunc denormat
agellum."

'Angulus' is a common term in the Gromatic writers. There were 'anguli' of various kinds, as we might suppose.

possessionibus me consule demoveri; praesertim quum vobis nihil quaeratur; [in] hoc enim vos errore versari diutius non oportet. Num quis vestrum ad vim, ad facinus, ad caedem accommodatus est? Nemo. Atqui ei generi hominum, mihi credite, Campanus ager et praeclara illa Capua servatur: exercitus contra vos, contra libertatem vestram, contra Cn. Pompeium constituitur: contra hanc urbem Capua, contra vos manus hominum audacissimorum, contra Cn. Pompeium decem duces comparantur. Veniant; coram, quoniam me in vestram contionem vobis flagitantibus convocaverunt, disserant.

praesertim] 'Praesertim, Quirites, cum:' Klotz and Baiter. 'Praesertimque cum:' E. F. P. This word 'que' appears in the MSS. to stand for 'Quirites' sometimes. There are several instances in these orations where 'que' may be an abbreviation of Quirites, or may have been written erroneously instead of it.—'[in] hoc:' 'in' is omitted by E. F. G. P.—'addidit Naugerius in Victoriana.' Baiter.

Cn. Pompeium] Again we have Cn. Pompeius, twice over. The servility of the man is disgusting, and we justly conclude that these attacks on the measure of Rullus are full of misrepresentation.

convocaverunt,] E. F. A.: 'evocaverunt,' Madvig, Baiter; 'sine caussa,' as the critics say. I have followed Klotz in omitting the 'et' after 'veniant,' which 'et' is omitted in E. F. P. Baiter has 'veniant coram et, &c.—disserant,' which makes a feeble conclusion. By omitting 'et,' making a pause after 'veniant,' and connecting 'coram' with 'disserant,' 'coram—disserant,' as Klotz justly says, is very appropriately put in opposition to the attack on Cicero before the people when he was not present; and he adds, "the whole passage is brought into harmony with the commencement of the speech: 'commodius fecissent—dixissent.'"

PRO C. RABIRIO

ORATIO.

INTRODUCTION.

L. Apuleius Saturninus, a tribunus plebis in b.c. 100, was one of the most turbulent agitators in that stormy period. The history of this his second tribunate is told by Appian (B. C. 28—32), and Plutarch (Marius, 28—30). He took an active part in driving from Rome Q. Caecilius Metellus, who had been censor. He proposed a Lex for the division of some land in the Provincia Gallia; which proposal seems to have been nothing else than a pretext to cover another object. Saturninus was elected tr. pl. for the third time in b.c. 100. The election of M. Antonius as one of the consuls for b.c. 99 was certain; but for the other place there was a contest between Memmius and Glaucia, an old ally of Saturninus. Glaucia and Saturninus, fearing the election of Memmius, set men with sticks to attack him at the Comitia, and he was killed before all the people. The tribune, Glaucia, and C. Saufeius, a quaestor, saved themselves from the fury of the people by seizing the Capitol. The Senate declared them to be enemies, and C. Marius the consul, with whom Saturninus had been closely allied, was obliged to take up arms against his old friend the tribune. He was, however, not very active in the affair. But others were, for they cut off the pipes which supplied the Capitol with water, and Saturninus and his partizans surrendered to Marius, who to save them from the people shut them up in the Curia Hostilia. The common folk thinking that this was merely a trick, took the tiles off the building and pelted Saturninus and those with him, till they were dead; "a quaestor," says Appian, "and a tribune and a praetor with the insignia of their office upon them." This was the most scandalous riot that had occurred at Rome since the murder of C. Gracchus; but if the story is true, the rioters were on the right side here, notwithstanding Saturninus "surrendered on the Public

Faith, as the Romans term it" (Plutarch, Marius, c. 30). Cicero in this oration (c. 10) does not admit exactly that the Publica Fides was given to Saturninus, and there was no reason why it should be.

It was near forty years after the death of Saturninus when C. Rabirius, a senator, now advanced in years, was tried on the charge of having had a share in the attack on Saturninus, and even with being the man who killed him. C. Julius Caesar is said to have instigated T. Labienus, whose uncle, Q. Labienus, had perished among the partizans of Saturninus, to prosecute Rabirius (Sueton. Caesar, c. 12). The history of this matter is told by Dion Cassius (xxxvii. 26—28).

"T. Labienus by commencing the prosecution of C. Rabirius for the massacre of Saturninus, caused very great disturbance at Rome; for Saturninus had been dead about six-and-thirty years; and in the contest with him the consuls of that time had received their instructions from the Senate. Consequently the Senate by this trial was deprived of the power to make Consulta, and the whole order of the commonwealth was disturbed by it. Rabirius did not admit that he had put Saturninus to death; he denied it. But the tribuni were entirely bent on breaking the strength and destroying the consideration of the Senate, and were labouring to get the power of doing whatever they liked. For by instituting an inquiry into the Consulta of the Senate and things that had been done so many years before, impunity was offered to those who attempted any thing of the like kind, and the power of punishing them was cut off. Accordingly the Senate both for other reasons thought it a scandalous thing, if a senator, who had done no wrong and was now advanced in years, should perish; but still more were they indignant, because the first order in the State was brought into odium, and the administration of public affairs was put in the hands of the worst men. There was violent party spirit and contention on both sides about this trial, the one side making an effort to prevent the court being formed, and the other to secure its sitting. And when through Caesar and others the latter party prevailed, again they disputed about the manner of trial. Now Caesar himself with L. Caesar was the judge; for it was no simple matter that Rabirius was tried for, but it was the offence of Perduellio; and they condemned Rabirius, though they were not named by the people according to the ancient custom, but by the Praetor contrary to law. Rabirius appealed, and he would certainly have been condemned by the people too, if Metellus Celer, who was an augur and Praetor, had not prevented it. For as the people would not listen to any reason from him, and did not take into consideration that the condemnation had been made contrary to custom, Metellus ran up to the Janiculus, before the people had come to any decision by

their vote, and pulled down the military flag, so that they could not then give a judgment."

Dion explains the meaning of this flag on the Janiculus, and it cannot be better explained in fewer words: "This matter of the flag is as follows. As in ancient times many enemies dwelt near the city, the Romans fearing lest at some time when they were assembled by Centuriae, some of them should attack the city, made a rule that they should not all vote at once, but that some under arms should always watch that place in turns. And they used to watch the place so long as the assembly was held, but when they were about to dissolve it, the flag was taken down and the guards came away; for it was not lawful, if that place was not guarded, to do any public business. This was done only in the case of the assemblies by Centuriae, because they were held without the walls, and all who were under arms were required to meet together. And this is done even now for the sake of conforming to usage. So on this occasion the assembly was dissolved by taking down the flag, and Rabirius was saved; for though Labienus might have brought him to trial again, he did not do it."

The Populus summoned by their Centuriae was an Exercitus (Livy, 39. c. 15); and this was the reason why the Centuriata Comitia could not be held within the Pomoerium (Laelius Felix, quoted by Gellius, xv. 27).

Duellum is an old form of Bellum; and Perduellio and Perduellis contain respectively the element which is in meaning equivalent to the root of Bellum. 'Perduellis' in the sense of 'enemy' occurs in the Roman writers; and this seems to have been the term used to signify 'enemy,' before 'hostis,' which originally signified 'foreigner' or 'alien,' got its later meaning of 'enemy' (Cicero, De Off. i. 12; Dig. 50. 16. 234: "Quos nos hostes appellamus, eos veteres perduelles appellabant, per eam adjectionem indicantes cum quibus bellum esset;" excerpt from Gaius, Libro ii. ad legem Duodecim Tabularum). When the terms 'hostis' and 'peregrinus' were used to signify respectively, the one 'an enemy,' and the other 'a foreigner' or 'alien,' Perduellis got the limited signification of enemy to the State, or a man guilty of treason against the State. The terms 'parricida' and 'perduellis' seem to be sometimes applied to the same crime, but it is merely a figure of speech when a 'perduellis' is called a 'parricida.' The surviving Horatius (Livy, i. 26) who killed his sister was guilty of Perduellio, and of murder too, for it was an act of homicide done from deliberate purpose; and perhaps it was viewed as Perduellio, because by killing his sister he assumed a power which did not belong to him, and inflicted a just punishment which the State only could inflict. This is

rather a refined view of the matter; but still it seems that the name of Perduellis was not given to an ordinary murderer, a Sicarius, but to a man who had killed a Magistratus, or some citizen with whom he was in the intimate relationship of consanguinity, affinity, or the relationship of patron or client. The relationship might be so near as to make the offence Parricidium.

The form of trial and the punishment in the case of the Horatius were the same as in later times. Under the Kings, the King summoned the Populus; in the time of the Republic, a Magistratus of the proper rank summoned the Populus to choose two men (Duumviri) to hear and decide; the rules of the trial were these (Livy, i. 26): "Duumviri perduellionem judicent; si a duumviris provocarit, provocatione certato; si vincent, caput obnubito: infelici arbori veste (reste) suspendito: verberato vel intra pomoerium vel extra pomoerium." If the man was condemned, he could appeal to the popular assembly; and if the assembly confirmed the judgment, he was executed.

Under the Republic it is supposed that the notion of Perduellio must have been somewhat modified. The various acts which came within the denomination of Perduellio are carefully collected and arranged by Rein (Das Criminalrecht der Römer, p. 474). The essence of all these acts consists in some form of attack on the sovereignty of the State; among which were included attacks on the dignity and authority of the Magistratus, especially the sacrosanct tribuni plebis. This was the offence that Rabirius was charged with. The punishment was death by hanging, or by being thrown from the Tarpeian rock (Livy, vi. 20), or by being beheaded, which last punishment was particularly appropriated to traitors (Livy, x. 1. 20).

The appeal in case of Perduellio properly belonged to the Comitia Centuriata; but the Comitia Tributa also sometimes exercised jurisdiction in such cases. It is not our business to inquire here wherein the jurisdiction of the two Comitia differed, as it is of no importance for the understanding of this oration. The matter is discussed and references to the ancient and modern authorities are given in Rein's Criminalrecht der Römer. Rein gives a list of cases of Perduellio brought before the Comitia Centuriata, and of cases brought before the Tributa up to the year B.C. 107. Offences against the State as such were gradually comprehended under the term of 'Majestas imminuta,' which simply signifies that the offender by his act had impaired or tried to impair the integrity of the Roman State. The strict and severe old process of Perduellio was disliked, and almost went out of fashion, though it still existed after the offence of Majestas had been defined by several Leges. The first Lex on Majestas was the Apuleia, proposed by the turbulent tribune L. Apuleius Saturninus, whom C. Rabirius was charged with

killing. It is uncertain if this Lex was enacted in his first tribunate B.C. 102, or in his second and last tribunate B.C. 100; but probably it belonged to his second tribunate. It appears that this Lex declared all violence against the Tribunes and the raising of civil disturbance to be 'Majestas imminuta' (Cicero, De Inv. ii. 17, 18; who gives the definition of 'Majestatem minuere'). Rabirius might have been tried under this Lex, but his enemies chose to make him submit to a harder trial. They tried to get him condemned under the old law of Perduellio on the charge of violence against the holy person of a Tribune. The punishment was still the old punishment, hanging, pitching from the Tarpeian rock, or beheading; with the confiscation of property and eternal ignominy of the man's name. The people voted by ballot since the Lex Caelia, B.C. 107. We know no more of Caesar's motives in bringing an old man to trial near forty years after the act with which he was charged, than the brief notices tell us, which have been referred to. One cannot suppose that he did it honestly. It was a party measure, one of the means by which this bold, unprincipled man, sought popular favour; by maintaining the inviolable character of the popular magistrates, even when they had declared war against the State.

Cicero (Vol. I. Verr. ii. 1. c. 5, note) threatens Verres with a prosecution for Perduellio. But on this occasion he and Hortensius defended Rabirius; they defended the cause of the Nobiles against the popular party, the cause of order and constitutional liberty, as they understood it, against disorder and revolution.

Niebuhr (Preface to his edition of the fragment of this oration, Rome, 1820) thinks that Dion has misunderstood the trial of Rabirius; and that the Populus either never was assembled to try Rabirius for Perduellio, or that if this danger was removed in some way, Labienus still attempted to impose a penalty (mulcta) on him. The 'mulctae irrogatio' (c. 3) was something like a Bill of pains and penalties; and in this case, as Niebuhr observes, it comprehended a great number of charges which had no relation to Perduellio. Also, Cicero makes Labienus complain that the 'perduellionis judicium' was destroyed by Cicero, and Cicero himself, Niebuhr says, boasts "se carnificem de foro, crucem de campo sustulisse." But Cicero does not say so. He says, "What is there to wish for that I would have liked better than this, that I as consul should have removed the executioner from the Forum, the cross from the Campus?" He says that their ancestors would not allow this form of trial after the expulsion of the Kings; that Labienus tried to restore it, and that he resisted it. There is no meaning in the speech unless Cicero was defending Rabirius against Perduellio. It is true that there is something obscure and indefinite in the orator's talk; but if we choose to make him as clear as we can instead of as obscure as we can, we must

take the easier explanation, the more obvious, instead of the more difficult and the more remote from common apprehension. Niebuhr adds that in the peroration contained in the Fragment, which he published, Cicero says nothing of imprisonment and hanging, but of exile, if Rabirius should be condemned. But if any one will read attentively c. 13, he may conclude that the words 'Neque a vobis,' &c., can be as well applied to a man threatened with an ignominious death as to a man who was threatened with exile. And what sense is there in the peroration c. 12, where Cicero asks what he should do, if Labienus should seize the Capitol like Saturninus, if he was merely answering matters that concerned a penalty, matters, as Niebuhr says, which have no relation to Perduellio? Niebuhr says, however, that he does not deny that Rabirius did appeal to the Populus, but he concludes from the complaint of the tribune and the boast of Cicero, that the sentence of the Duumviri, who were illegally appointed by the Praetor, had been annulled by the 'auctoritas' of the Consul and the Senate. There is no proof of this. But suppose that it is so; that the Senate and Consul could do this, and that they had done it. Still there was an appeal to the Populus about something, and about the offence of Perduellio among the rest. For Cicero makes no answer to the things in respect of which the 'mulcta,' the penalty, was proposed to the Populus (c. 2, 3); in fact no answer was necessary. The part which touched on the death of Saturninus was one which required not the orator's talent, but the support which the Consul could give by virtue of his office (Consulis auxilium). Saturninus lost his life, but those who took arms against him acted under the authority of the Senate. If Rabirius killed Saturninus, he acted legally, for he and every body else had authority to kill him; and he well deserved his fate. It is plain from c. 3, 'Consulis auxilium implorat et flagitat. Nam de,' &c., that the charge against Rabirius could not be maintained, for he acted according to law, and that the trial for Perduellio was illegal; that Labienus had in some way been frustrated in his attempt against Rabirius; that Cicero was the person who had so far frustrated this attempt; but the peroration clearly shows that it was the Populus who had the power of confirming what he had done, of annulling all the proceedings against Rabirius.

Klotz has some remarks on this trial. He says that it was only the form of trial that could be after the old traditional procedure, but that the same punishment could not be inflicted "because the Lex Porcia, the Leges Semproniae prohibited the corporal punishment and execution of a Roman citizen." But this is a false view of these Leges. He adds: "Consequently, as we may observe generally in Roman criminal procedure, it was only this different kind of proceeding before the court, which had been revived against Rabirius out of the old form of

trial for Perduellio, and of which our orator complains in more than one place; the only penalty at present even in this case was exile from Rome." (See c. 13.) With this explanation, he concludes, it will not be difficult to understand the several parts of this speech, and what Cicero says to the people on the appeal made by Rabirius from the judgment of the Duumviri.

I have not made this extract because I think that it is of any value, but that the reader may see that critics do not agree; that there is still some difficulty in ascertaining precisely the question on which this speech was made; and that it is not a very easy thing to understand Cicero's orations. There are some more remarks in a note on c. 3.

I have compared this text with C. Halm's in the second edition of Orelli's Cicero. Halm has referred to the following MSS. among others:—

P = Palimpsestus Vaticanus, ex quo Niebuhrius fragmenta Romae a. 1820 primus edidit.

V = alius palimpsestus Vaticanus exiguam orationis partem continens.

S = Codex Salisburgensis.

a ... to n = Codices a Lagomarsinio collati.

M. TULLII CICERONIS

PRO

C. RABIRIO

PERDUELLIONIS REO

AD QUIRITES

ORATIO.

I. Etsi, Quirites, non est meae consuetudinis initio dicendi rationem reddere, qua de caussa quemque defendam, propterea quod cum omnibus civibus in eorum periculis semper satis justam mihi caussam necessitudinis esse duxi; tamen in hac defensione capitis, famae fortunarumque omnium C. Rabirii proponenda ratio videtur esse officii mei, propterea quod quae justissima mihi caussa ad hunc defendendum esse visa est, eadem vobis ad absolvendum debet videri. Nam me quum amicitiae vetustas, quum dignitas hominis, quum ratio humanitatis, quum meae vitae perpetua consuetudo ad C. Rabirium defendendum est adhortata, tum vero ut id studiosissime facerem, salus rei publicae, consulare officium, consulatus denique ipse mihi una vobiscum cum salute rei publicae commendatus coegit. Non enim C. Rabirium culpa delicti, non invidia vitae, non denique veteres justae gravesque inimicitiae civium in

1. 'Inscriptio Orationis. M. T. Ciceronis Pro C. Rabirio Perduellione oratio ad Quirites incipit.' S.

invidia vitae,] See Pro Cluentio, c. 2.—'summum auxilium:' the Senatusconsultum made in the time of great danger, which empowered the consuls to use all the force at their command: "Viderent or Darent operam consules ne quid Res Publica detrimenti caperet." It was the "forma senatusconsulti ultimae necessitatis" (Livy, iii. 4). In Cicero's time, and even before his time, instead of a Dictator being appointed for such an emergency, according to the old fashion, the Dictatorial power was conferred by this form of Senatusconsultum. The consuls were empowered to save the State, to use any force that they could command to remove the danger (Pro Milone, c. 26; Dion Cassius, 37. c. 31). Sallust (Catil. c. 29) has a useful remark on this Senatusconsultum: "Itaque, quod plerumque in atroci negotio solet, senatus decrevit, Darent operam consules ne quid Res Publica detrimenti caperet. Ea potestas per senatum more Romano magistratui maxima permittitur: exercitum parare, bellum gerere, coercere omnibus modis socios atque cives: domi militiaeque imperium atque judicium summum habere; aliter sine populi jussu nulli earum rerum consuli jus est." The Senate was the conservative

discrimen capitis vocaverunt; sed ut illud summum auxilium majestatis atque imperii, quod nobis a majoribus est traditum, de re publica tolleretur, ut nihil posthac auctoritas senatus, nihil consulare imperium, nihil consensio bonorum contra pestem ac perniciem civitatis valeret, idcirco in his rebus evertendis unius hominis senectus, infirmitas solitudoque tentata est. Quamobrem si est boni consulis, quum cuncta auxilia rei publicae labefactari convellique videat, ferre opem patriae, succurrere saluti fortunisque communibus, implorare civium fidem, suam salutem posteriorem salute communi ducere, est etiam bonorum et fortium civium, quales vos omnibus rei publicae temporibus exstitistis, intercludere omnes seditionum vias, munire praesidia rei publicae, summum in consulibus imperium, summum in senatu consilium putare; ea qui secutus sit, laude potius et honore quam poena et supplicio dignum judicare. Quamobrem labor in hoc defendendo praecipue meus est, studium vero conservandi hominis commune mihi vobiscum esse debebit. II. Sic enim existimare debetis, Quirites, post hominum memoriam rem nullam majorem, magis periculosam, magis ab omnibus vobis providendam, neque a tribuno pl. susceptam, neque a consule defensam, neque ad populum Romanum esse delatam. Agitur enim nihil aliud in hac caussa, Quirites, quam ut nullum sit posthac in re publica publicum consilium, nulla bonorum consensio contra improborum furorem et audaciam, nullum extremis rei publicae temporibus perfugium et praesidium salutis. Quae quum ita sint, primum, quod in tanta dimicatione capitis, famae fortunarumque omnium fieri necesse est, ab Jove Optimo Maximo ceterisque diis deabusque immortalibus, quorum ope et auxilio multo magis haec res publica quam ratione hominum et consilio gubernatur, pacem ac veniam peto, precorque ab iis ut hodiernum diem et ad hujus salutem conservandam et ad rem

power. It held the administration, and so long as the citizens were faithful to their country, the Senate could resist revolution. It could arm a man with unlimited power, and restore tranquillity by the salutary punishment of a rebel.

2. *quam ut*] 'nisi ut:' Halm.

pacem ac veniam]

"Principio delubra adeunt pacemque per aras
Exquirunt." (Virg. Aen. iv. 56.)

On which Servius has the following remark: "PACEMQUE. Benevolentiam, ut: Si sine pace tua atque invito numine." On another passage, 'orantes veniam' (Aen. i. 523), he says: "Venia pro culpa petitur; sed nunc aut pacem aut beneficium propter incendium navium: aliqui tamen Veniam pro impunitate accipiunt, nam mox addit: Prohibe infandos a navibus ignes. Et proprie verbum Pontificale est, unde est: Tu modo posce deos veniam." Pax and Venia are often joined together, as in the oration Pro Fonteio. When the Pax of the deity was granted, he was 'pacatus.'

"Pacatus mitisque, rogant Ismenides, Adsis." (Ovid, Met. iv. 31.)

publicam constituendam illuxisse patiantur. Deinde vos, Quirites, quorum potestas proxime ad deorum immortalium numen accedit, oro atque obsecro, quoniam uno tempore vita C. Rabirii, hominis miserrimi atque innocentissimi, salus rei publicae vestris manibus suffragiisque permittitur, adhibeatis in hominis fortunis misericordiam, in rei publicae salute sapientiam, quam soletis.

Nunc quoniam, T. Labiene, diligentiae meae temporis angustiis obstitisti, meque ex comparato et constituto spatio defensionis in semihorae curriculum coegisti, parebitur, et, quod iniquissimum est, accusatoris conditioni, et, quod miserrimum, inimici potestati. Quamquam in hac praescriptione semihorae patroni mihi partes reliquisti, consulis ademisti; propterea quod ad defendendum propemodum satis erit hoc mihi temporis, ad conquerendum parum. Nisi forte de locis religiosis ac de lucis, quos ab hoc violatos esse dixisti, pluribus verbis tibi respondendum putas; quo in crimine nihil est umquam abs te dictum, nisi a C. Macro objectum esse crimen id C. Rabirio. In quo ego demiror meminisse te quid objecerit C. Rabirio Macer inimicus, oblitum esse quid aequi et

proxime ad deorum] So Horace (Carm. i. 1) calls the Romans 'Terrarum dominos.' The reader may consult the note on this passage in Macleane's Horace.

T. Labiene,] This is the prosecutor, the man who afterwards served Caesar well in his Gallic wars, but left him when he invaded Italy. The writer of the article Labienus in Smith's Dict. of Biog. observes that most modern writers say that Labienus was a cognomen of the Atia Gens, but that there is no authority for this assertion, as Spanheim showed.

It seems that in this Judicium Perduellionis the prosecutor could limit the time for the defence. Cicero means probably half an hour of the natural day. The Roman natural day was from sunrise to sunset, and the night was the time from sunset to sunrise. Their 'dies civilis' began at midnight, a reckoning which we have taken, and continued till the next midnight. The natural day was divided into twelve 'horae,' the length of which would depend on the season of the year.—'curriculum:' 'circulum,' Halm.

locis religiosis] Turnebus remarks that though a place was made 'religiosus' by putting a dead body in it, as Gaius (ii. 6) says, yet he supposes that the term must have a larger signification here, as there were 'religiosa loca' in the city, but no 'sepulcra.' No doubt the word must have the larger meaning here. Temples were often in 'luci' or surrounded by plantations of trees, all the ground being consecrated (sacer). Cicero says (De Legg. ii. 8): "Delubra habento, lucos in agris habento et larum sedes." His remarks on the use of temples are instructive (c. 11): "Melius Graeci atque nostri: qui ut augerent pietatem in deos, easdem illos urbes quas nos incolere voluerunt.—Est enim quaedam opinionis species deorum in oculis, non solum in mentibus: eandemque rationem luci habent in agris. Neque ea, quae a majoribus prodita est, quum dominis, tum famulis posita in fundi villaeque conspectu religio larum repudianda est." The people required a visible object to remind them of the invisible.

As these 'luci' were used for religious purposes, so they were perverted to bad purposes, to the profanation of religion. Hence Horace says (Carm. i. 12. v. 59):

"Tu parum castis inimica mittes
Fulmina lucis."

C. Macro] C. Licinius Macer was about the same age as Cicero. His character as an orator is in the Brutus (c. 67). He also wrote Annales. Cicero, whose discrimination of oratorical talent is marked by great precision of terms, says of him: "In inveniendis componendisque rebus mira accuratio, ut non facile in ullo diligentiorem

jurati judices judicarint. III. An de peculatu facto, aut de tabulario incenso longa oratio est exprimenda? quo in crimine propinquus C. Rabirii judicio clarissimo, C. Curius, pro virtute sua est honestissime liberatus; ipse vero Rabirius non modo in judicium horum criminum, sed ne in tenuissimam quidem suspicionem verbo est umquam vocatus. An de sororis filio diligentius respondendum est? quem ab hoc necatum esse dixisti, quum ad judicii moram familiaris funeris excusatio quaereretur. Quid enim est tam veri simile quam cariorem huic sororis maritum quam sororis filium fuisse? atque ita cariorem ut alter vita crudelissime privaretur, quum alteri ad prolationem judicii biduum quaereretur? An de servis alienis contra legem Fabiam retentis, aut de civibus Romanis contra legem Porciam verberatis aut necatis plura dicenda sunt, quum tanto studio C. Rabirius totius Apuliae, singulari voluntate Campaniae [vicinitatis] ornetur? quumque ad ejus propulsandum periculum non modo homines, sed prope regiones ipsae convenerint, aliquanto etiam latius excitatae quam ipsius vicinitatis nomen ac termini postulabant? Nam quid ego ad id longam orationem comparem, quod est in eadem mulctae irrogatione praescriptum, hunc

majoremque cognoverim, sed eam ut citius veteratoriam quam oratoriam diceres." It is said that Macer prosecuted Rabirius in B.C. 73. Nothing more is known of this trial.

3. *peculatu*] We must infer that though Rabirius was tried for Perduellio, something had been said after Roman fashion about many other offences, which were imputed to him, but not proved. See Vol. I. Verr. Act. 1. c. 13, and ii. 3. c. 72 on Peculatus; and the Introduction to this oration.

tabulario] A 'tabularium' is a place for the preservation of Tabulae, such as Senatusconsulta, the Tabulae Censoriae, and registers of various kinds. Livy (43. c. 18) has the following passage: "Censores extemplo in atrium Libertatis ascenderunt, et ibi signatis tabellis publicis clausoque tabulario et dimissis publicis servis negarunt se prius quidquam publici negotii gesturos," &c. The Greek towns had 'tabularia' (ἀρχεῖα) for the public records, as Heraclea (Pro Archia, c. 4). Public records had the same bad luck in ancient as in modern times: the office was burnt and the Tabulae were destroyed.

The plans and measurements of land were kept in offices. Under the empire there was a chief office for land surveys, called the Tabularium Caesaris (Hyginus, De limit. p. 202, ed. Lachm.; and p. 400).

exprimenda?] Manutius altered this to 'expromenda,' and Halm has followed him injudiciously.

C. Curius,] This is his real name as in T. The rest of the MSS. have Curtius. (See Pro Rabirio Post. c. 2). C. Curius married the sister of Rabirius, and Rabirius was charged with murdering his sister's son in order that the husband might have his trial put off for two days: a most improbable thing, as Cicero argues. The law was perhaps the same in Cicero's time as we find it stated by Ulpian (Dig. 2. 4. 2; De in Jus vocando): "Praeterea in jus vocari non debet qui uxorem ducit, aut eam quae nubit, nec judicem dum de re cognoscit, nec eum qui apud Praetorem causam agit, neque funus ducentem familiare, justave mortuo facientem."

legem Fabiam] This was the Lex de Plagiariis. See Index.—'legem Porciam:' see Vol. I. Verr. ii. 5. c. 63.—'Campaniae.' the MSS. reading, which Manutius altered to 'Campanae.' Perhaps 'vicinitatis' is not genuine. It occurs again a few lines further on. We may infer that Rabirius had land in Campania. Cicero (Ad Att. i. 6) speaks of a house of some Rabirius at Neapolis, which was sold. The commentators say that it was the house of this C. Rabirius.

mulctae irrogatione] Labienus, as the 'accusator' demanded of the people the in-

nec suae nec alienae pudicitiae pepercisse? Quin etiam suspicor, eo mihi semihoram a Labieno praestitutam esse ut ne plura de

fliction of a pecuniary penalty on Rabirius. Such penalties were either contained in a Lex which already existed, or they were formally proposed to the people by a magistratus, and confirmed by them. T. Menenius was fined (Livy ii. 52): "In mulcta temperarunt tribuni: quum capitis anquisissent, duo millia aeris damnato mulctam edixerunt." The expression 'mulctam irrogare' is founded on the word 'rogare,' a term applied to a measure proposed by a qualified magistratus to the people for their confirmation. It appears that this 'mulctae irrogatio' contained several grounds or reasons, for Cicero says "in eadem mulctae irrogatione;" and these are the grounds which Cicero has already mentioned. It is not easy to understand all the Roman procedure in criminal matters. It appears that a number of charges were lumped together in respect of which Labienus called for a penalty. Cicero makes no defence to these charges, and we must suppose that Labienus could not prove them, and would not try to prove them. It seems as if they were made 'invidiae caussa.' The whole procedure appears to have been very loose. In place of 'praescriptum' Halm writes 'perscriptum,' the correction of Manutius.

The other matter was Perduellio; and Cicero was charged with putting an end to this mode of trial. This may mean that he had done his best, and was still trying to put an end to it. (Introduction). Klotz has the following note on this passage: "Since the trial for Perduellio, as we have already seen, had not been expressly taken away by a Lex, but Cicero was resolved to consider it as taken away, his opponent could naturally charge him with taking away this kind of trial. Yet it will have been made plain by what has been said above, that Cicero had good reason for considering this form of trial rather as taken away." In the book De Legibus (iii. 3. ed. Bake) Cicero says: "Quum magistratus judicassit irrogassitve, per populum multae poenae certatio esto." There was an interval between the 'mulctae irrogatio,' and the judgment on it (Livy 25. c. 3). The 'irrogatio,' it is said, lasted during a 'trinundinum' like other Leges. Turnebus concludes from this passage that this speech was delivered before the Centuriata Comitia were held. It may be so. I do not understand the matter.

If Rabirius appealed from the judgment of the Duumviri, he appealed from their judgment on the matter of the Perduellio. The 'provocatio' of Rabirius was simply against the sentence of the Duumviri; and the populus would either affirm the sentence or annul it. Dion's story is that Metellus Celer took down the flag on the Janiculus before the people voted, and so prevented a vote. The 'mulctae irrogatio' was a distinct thing from the trial for Perduellio and from the appeal. If Rabirius had been acquitted on the appeal, or if the voting was stopped by the act of Metellus Celer, Labienus could still attempt to enforce a 'mulcta' on him; and Niebuhr solves the difficulty by supposing that it was so. He gives the instance of P. Clodius, who was going to be tried for Perduellio; but as the Centuriae were coming together a storm arose, which vitiated the proceedings. Afterwards the tr. pl. interposed their veto, declaring that the same prosecutors during their term of office should not twice prosecute the same man for Perduellio. Accordingly the form of proceeding was altered, though the prosecutors were the same, and a fine being proposed (mulcta irrogata), the populus gave judgment against him. (Schol. Bob. In Orat. in Clodium et Curionem, v. 4.) This P. Clodius was the son of Appius Caecus, the consul who fought the naval battle off Drepanum contrary to the auspices, and lost a hundred and twenty ships.

This supposition would make the 'mulctae irrogatio' intelligible. But, as it has been stated in the Introduction, Niebuhr still thinks that Rabirius did appeal to the populus, for the Lex required it (Liv. i. 26), but that the judgment of the Duumviri, who had been appointed by the Praetor contrary to the Lex, had been annulled by the 'auctoritas' of the Consul and the Senate. He is even inclined to suppose that Metellus' taking down the flag was done in the matter of the 'judicium de mulcta,' when the people were going to decide on the 'mulcta,' if Suetonius did not intimate that Rabirius was acquitted by the Suffragia of the people, and if Cicero himself did not indicate that Rabirius was saved by his own merits, and not through any person's help. (In Pisonem, c. 2.)

It is true that the words of Suetonius (Caesar, c. 12) seem to lead to the probable conclusion that Rabirius was acquitted on the appeal to the populus against the judgment of the Duumviri (ut ad populum

pudicitia dicerem. Ergo ad haec crimina, quae patroni diligentiam desiderant, intelligis mihi semihoram istam nimium longam fuisse.

Illam alteram partem de nece Saturnini nimis exiguam atque angustam esse voluisti; quae non oratoris ingenium, sed consulis auxilium implorat et flagitat. Nam de perduellionis judicio, quod a me sublatum esse criminari soles, meum crimen est, non Rabirii. Quod utinam, Quirites, ego id aut primus aut solus ex hac re publica sustulissem! utinam hoc, quod ille crimen esse vult, proprium testimonium meae laudis esset! Quid enim optari potest, quod ego mallem quam me in consulatu meo carnificem de foro, crucem de campo sustulisse? Sed ista laus primum est majorum nostrorum, Quirites, qui expulsis regibus nullum in libero populo vestigium crudelitatis regiae retinuerunt; deinde multorum virorum fortium, qui vestram libertatem non acerbitate suppliciorum infestam, sed lenitate legum munitam esse voluerunt. IV. Quamobrem uter nostrum tandem, Labiene, popularis est? tune, qui civibus Romanis in contione ipsa carnificem, qui vincla adhiberi putas oportere, qui in campo Martio, comitiis centuriatis, auspicato in loco, crucem ad civium supplicium defigi et constitui jubes; an ego, qui funestari contionem contagione carnificis veto, qui expiandum forum populi Romani ab illis nefarii sceleris vestigiis esse dico, qui castam contionem, sanctum campum, inviolatum corpus omnium civium Romanorum, integrum jus libertatis defendo servari oportere? Popularis vero tribunus plebis, custos defensorque

provocanti nihil aeque ac judicis acerbitas profuerit). The passage in the oration against Piso also leads to a probable conclusion that Cicero successfully defended the 'auctoritas' of the Senate in the matter of Rabirius' trial for Perduellio; for he is there enumerating all the things that he did in his consulship. The difficulty in the passage of the oration against Piso consists in the words 'Senatus auctoritatem,' which may mean not any thing done by the Senate in the matter of Rabirius' trial for Perduellio, but generally the 'auctoritas' of the Senate, and particularly in giving the consuls a commission to put down the riot of Saturninus by force of arms. But the passage in the Piso clearly states that Cicero did defend Rabirius against a charge of Perduellio.

I have said so much upon this matter, because it is better to make a difficulty palpable and to leave it unexplained, than to pass it over without notice. If a commentator states all the facts by which a judgment must be formed, a careful reader may sometimes explain that which the commentator has missed.

Quod utinam,—id?] 'Id delevit Beckius;' Halm, who has imprisoned it thus [id]. But Beckius did wrong. Critics have often short memories. It is a common expression. There is in the Verrines, ii. 1. c. 26: "Quod ubi ille intellexit id agi ut," &c. And (ii. 2. c. 66): "Quod nisi Metellus hoc tam graviter egisset," which is exactly the same as this, except that there is 'hoc' for 'id.'—'utinam hoc:' 'ut hoc,' Halm.

4. *contione*] '*Contione* mei praeter n,' Baiter: which is worth noting as an example where the true form of a word is in the MSS., and the corrupt form 'concione' still appears in many texts.

defendo servari oportere?] This means "I who maintain that the law of liberty ought to be maintained entire." From the notion of 'repelling,' the original sense of 'defendere,' comes the notion of protecting, supporting, maintaining a thing.

juris et libertatis. Porcia lex virgas ab omnium civium Romanorum corpore amovit: hic misericors flagella rettulit. Porcia lex libertatem civium lictori eripuit: Labienus homo popularis carnifici tradidit. C. Gracchus legem tulit, ne de capite civium Romanorum injussu vestro judicaretur: hic popularis a duumviris, injussu vestro, non judicari de cive Romano, sed indicta caussa civem Romanum capitis condemnari coegit. Tu mihi etiam legis Porciae, tu C. Gracchi, tu horum libertatis, tu cujusquam denique hominis popularis mentionem facis, qui non modo suppliciis inusitatis, sed etiam verborum crudelitate inaudita violare libertatem hujus populi, tentare mansuetudinem, commutare disciplinam conatus es? Namque haec tua, quae te hominem clementem popularemque delectant, I LICTOR, COLLIGA MANUS, quae non modo hujus libertatis mansuetudinisque non sunt, sed ne Romuli quidem aut Numae Pompilii, Tarquinii superbissimi atque crudelissimi regis ista sunt cruciatus carmina, quae tu, homo lenis ac popularis, libentissime commemoras. CAPUT OBNUBITO, ARBORI INFELICI SUSPENDITO. * * * Quae verba, Quirites, jampridem in hac re publica non solum tenebris vetustatis, verum etiam luce libertatis oppressa sunt.

V. An vero, si actio ista popularis esset et si ullam partem aequitatis haberet aut juris, C. Gracchus eam reliquisset? Scilicet tibi graviorem dolorem patrui tui mors attulit quam C. Graccho fratris, et tibi acerbior ejus patrui mors est, quem nunquam vidisti, quam illi ejus fratris, quicum concordissime vixerat; et similis viri

C. Gracchus] See Vol. I. Verr. ii. 5. c. 63.—'indicta caussa:' this means, as Turnebus says, that a man is condemned without a hearing, if he is not tried in legal form; and the court of Duumviri which condemned Rabirius was not duly constituted (Introduction).

quae non modo] 'Quae' is in the MSS.; but Halm and others omit it, and then they find a difficulty. No wonder that they do. Halm points it 'Numae Pompilii: Tarquinii,' &c. But 'ista sunt cruciatus' refers to 'haec tua,' and after so many words have been interposed, such a repetition as 'ista' is almost necessary. Klotz writes 'quae non modo,' and points it well enough; but he has an absurd note on it. In the formula, or 'carmen,' as Livy calls it (i. 26: Lex horrendi carminis), Niebuhr directs our attention to the lyrical measure of the old Roman verse, which was handed down by tradition and was the source of Livy's formula. But the lyrical measure of this formula is purely imaginary.

5. *actio*] 'Actio' is the prosecution as in the case against Verres; and 'actor' the prosecutor. Vol. I. Divin. c. 1.

C. Graccho fratris,] Plutarch (C. Gracchus, c. 1): "Cicero the orator also says, that Caius declined all offices, and had determined to live in retirement, but that his brother appeared to him in a dream, and said, Caius, why do you linger? There is no escape: one life for both of us, and one death in defence of the people is our fate." This is told by Cicero, De Divinatione, i. 26.

Cicero has just asked why C. Gracchus did not prosecute the murderers of his brother for Perduellio, if such a proceeding was 'popularis.' I think that Labienus could easily find an answer to this question.

similis viri] "Codices: *simili jure*, Beckius; ego malim, *simili vi*," Halm. Still he keeps 'similis viri' in his text. It is impossible to understand what these critics mean. Cicero says: "You, I suppose, when you are avenging the death of

tu ulcisceris patrui mortem atque ille persequeretur fratris sui, si ista ratione agere voluisset: et par desiderium sui reliquit apud populum Romanum Labienus iste, patruus vester, quisquis fuit, ac Ti. Gracchus reliquerat? An pietas tua major quam Gracchi, an animus, an consilium, an opes, an auctoritas, an eloquentia? quae si in illo minima fuissent, tamen prae tuis facultatibus maxima putarentur. Quum vero his rebus omnibus C. Gracchus omnes vicerit, quantum intervallum tandem inter te atque illum interjectum esse putas? Sed moreretur prius acerbissima morte millies C. Gracchus quam in ejus contione carnifex consisteret, quem non modo foro, sed etiam caelo hoc ac spiritu censoriae leges atque Urbis domicilio carere voluerunt. Hic se popularem dicere audet, me alienum a commodis vestris; quum iste omnes et suppliciorum et verborum acerbitates non ex memoria vestra ac patrum vestrorum, sed ex annalium monumentis atque ex regum commentariis conquisierit, ego

your uncle, are avenging the death of the same kind of man as he would have done if he had avenged his brother's death." There is a like use of 'similis—atque' in another place (comp. Vol. I. Verr. ii. 3. c. 83: "aliquid ab isto simile in aestimatione atque a ceteris esse factum"). In this as in many other cases, the Latin language expresses clearly and forcibly in few words what we can hardly express in many. The translation which I have given of this passage is no translation. The reader must try to find a better.

patruus vester,] He says 'vester,' which is correctly explained to be a term of contempt. It is by implication addressed to Labienus and his crew. It occurs again in c. 7. Labienus had talked a great deal of 'my uncle,' his great uncle who was put to death for making a riot. Labienus' friends talked of *the* uncle; it was all uncle, 'I and my uncle.' So Cicero says, "You and your uncle—who knows any thing about your uncle?" (quisquis fuit.)

eloquentia?] Cicero always praises the eloquence of Gracchus; and here we must take him to be sincere. Eloquence exists only in stormy times. Rhetoric may grow in times of peace. "Eloquentia quidem nescio an habuisset parem neminem" (Cicero, Brutus, c. 33). Cicero recommended the study of Gracchus' speeches. Gracchus was not vehement only: he was full of wisdom, and his words were well chosen (De Or. i. 34). A line is enough to show the man. Thoughts are common property: the style, it has been well said, is the man. To one who had the meanness to abuse his noble mother the tribune replied before the people: "Tu matri meae maledices, quae me peperit" (Seneca, Consol. ad Helviam, c. 16). But he said something more: *Σὺ γὰρ Κορνηλίαν λοιδορεῖς τὴν Τιβέριον τεκοῦσαν; Τίνα δὲ ἔχων παῤῥησίαν συγκρίνεις Κορνηλίᾳ σεαυτόν; Ἔτεκες γὰρ ὡς ἐκείνη; καὶ μὴν πάντες ἴσασι Ῥωμαῖοι πλείω χρόνον ἐκείνην ἀπ' ἀνδρὸς οὖσαν ἢ σὲ τὸν ἄνδρα.* (Plut. C. Gracchus, c. 4.)

carnifex consisteret,] "He would have died a thousand times sooner than the executioner should have been standing there where he addressed the people." I suppose that he means this. We infer that the carnifex was not allowed to live within the city. All mankind agree to despise the man whose assistance they want. In the words 'Censoriae leges' we have an example of the improper use of the word Lex. Cicero means the regulations or rules of the Censors, which they made by virtue of their office, whatever these rules were. Such were the Leges of the Censores against luxury; and we may perhaps infer from this passage that they had forbidden a carnifex to dwell within the walls of Rome. Neither an execution nor an executioner were allowed within the holy precincts.

Tacitus (Annal. ii. 32) says: "In P. Marcium consules extra portam Esquilinam, quum classicum canere jussissent, more prisco animadvertere." Lipsius has a short note on this practice of executing criminals outside of the Esquilina Porta (Tacit. Annal. ii. 32. H.).

ex regum commentariis] The simplicity of the old commentators makes the learned

omnibus meis opibus, omnibus consiliis, omnibus dictis atque factis repugnarim et restiterim crudelitati? Nisi forte hanc conditionem vobis esse vultis, quam servi, si libertatis spem propositam non haberent, ferre nullo modo possent. Misera est ignominia judiciorum publicorum, misera multatio bonorum, miserum exsilium; sed tamen in omni calamitate retinetur aliquod vestigium libertatis. Mors denique si proponitur, in libertate moriamur; carnifex vero et obductio capitis et nomen ipsum crucis absit non modo a corpore civium Romanorum, sed etiam a cogitatione, oculis, auribus. Harum enim omnium rerum non solum eventus atque perpessio, sed etiam conditio, exspectatio, mentio ipsa denique indigna cive Romano atque homine libero est. An vero servos nostros horum suppliciorum omnium metu dominorum benignitas una vindicta

of our age smile, when they read that the Commentarii of the kings were the Tabulae on which the Acta regum were written, which were kept in the Tabularium Publicum (Hotmann). Turnebus also says, that the Commentarii of the kings, as Numa and Tullus Hostilius, who established the Judicium Perduellionis were extant in Cicero's time. And certainly Cicero means to say that they were extant, or he is talking to no purpose. Must we believe then that there were such Commentarii, true or false? If there were not, he is not speaking like a man of common understanding. If false, who made them? The Romans had so little sense that they believed many things about their early history which a modern critic rejects. Yet they had some sense, as they showed in many ways. They were very careful about public records, of which they had an enormous quantity. When the Galli Senones, the men who left the plains of the upper Seine and settled in Italy, burnt Rome in one of their marauding expeditions, most of the public and private records are said to have perished (Livy, vi. 1). The Twelve Tables may have perished too; and yet the Romans had them in Cicero's time, and they believed that they were genuine.

hanc conditionem] Slaves, he says, would not submit to such punishment as Labienus would inflict on Rabirius, if they had not the hope of liberty. Crucifixion was a servile punishment, but a slave had always the hope or possibility of freedom, which made his liability to punishment a tolerable condition.

si proponitur,] Halm says that Niebuhr pointed the passage thus in his copy: "si proponitur in libertate, moriamur." He may be right. Something can be said on both sides. Pointing is a modern curiosity, which the printer regulates pretty much as he pleases. The principle of pointing is not well established, and the practice is inconsistent. A man has attained perspicuity in style when he writes in such a way that nobody can mistake the meaning, if he reads straightforward without stops to help him. When a man speaks, he makes such pauses as the management of the breath and the meaning of his words require. Punctuation is not regulated by these two principles, though it seems that it ought to be. The Latin allows a great liberty in the order of the words, because their relation to one another is shown by the terminations, and such a language ought to be more perspicuous than ours; and I think that it is. If the Romans of Cicero's time used no points in their manuscripts, or used only very few, it is still probable that many passages would not seem obscure to them which we attempt to fix the meaning of by points here and there. The critics work a great deal at pointing, but they might save much of their trouble, if they told their readers to get the sense of the original from the order of the words which the author has chosen as best adapted to express his meaning. Most of Cicero's sentences are quite intelligible, if every stop between two periods is struck out. When this passage was pronounced by Cicero, we suppose that the Romans could understand whether he meant to join 'in libertate' to 'proponitur' or to 'moriamur.' I do not know whether it would be free from all ambiguity, when it was written and read.

una vindicta] The 'vindicta' was a rod or twig, properly called 'festuca.' The imposition of the 'vindicta' with certain formal

liberat, nos a verberibus, ab unco, a crucis denique terrore neque res gestae, neque acta aetas, neque vestri honores vindicabunt? Quamobrem fateor, atque etiam, T. Labiene, profiteor et prae me fero, te ex illa crudeli, importuna, non tribunicia actione, sed regia, meo consilio, virtute, auctoritate esse depulsum. Qua tu in actione quamquam omnia exempla majorum, omnes leges, omnem auctoritatem senatus, omnes religiones atque auspiciorum publica jura neglexisti, tamen a me haec in hoc tam exiguo meo tempore non audies. Liberum tempus nobis dabitur ad istam disceptationem.

VI. Nunc de Saturnini crimine ac de clarissimi patrui tui morte dicemus. Arguis occisum esse a C. Rabirio L. Saturninum, et id C. Rabirius multorum testimoniis, Q. Hortensio copiosissime defendente, antea falsum esse docuit. Ego autem, si mihi esset integrum, susciperem hoc crimen, agnoscerem, confiterer. Utinam hanc mihi facultatem caussa concederet, ut possem hoc praedicare, C. Rabirii manu L. Saturninum, hostem populi Romani, interfectum! —Nihil me clamor iste commovet, sed consolatur, quum indicat

words in the presence of a magistratus was one of the three Roman modes of manumitting a slave. This mode of manumission could only be effected before a magistratus; but it could be effected either in court (in jure), or out of court, and even on the road (Dig. 40. 2. 7). The allusions to this form of 'manumissio' are very common in the Latin writers; as in Persius (v. 88).

> "Vindicta postquam meus a praetore recessi."

unco,] A hook, with which a criminal was dragged along, dead or alive, it seems. Horace, Carm. i. 35, says 'severus uncus;' but in a different sense, as it is generally supposed.

> "Nec tibi contingent funus lacrimaeque tuorum.
> Indeploratum projiciere caput;
> Carnificisque manu populo plaudente traheris,
> Infixusque tuis ossibus uncus erit."
> (Ovid, Ibis, v. 165.)

In the last line there is a reading 'dentibus,' which makes the thing worse.

> "Sejanus ducitur unco
> Spectandus: gaudent omnes."
> (Juv. Sat. x. 66.)

Liberum tempus] He seems, says Turnebus, to threaten Labienus with a prosecution for neglecting the auspicia and breaking the Leges.

6. *clarissimi patrui*] P. Manutius very injudiciously proposed to alter this to 'carissimi;' which shows that he had not a quick perception of sarcasm and humour. Cicero is again on the subject of Labienus' uncle; 'my illustrious uncle,' as Labienus would say, and 'I his nephew.'—'et id:' Turnebus thinks that it should be 'at id,' and Halm has written it so in his text. I see no occasion for the change. But either may do here.

Q. Hortensio] Charisius, p. 74, quotes from this oration of Hortensius 'cicatricum mearum,' and says '*cicatricum* non cicatricium.' Some of the orations of Hortensius were preserved (Cicero, Brutus, 94). Though a great orator and powerful in action, he was not equal to Cicero as a writer, and his orations were neglected and forgotten. He spoke better than he wrote, says Cicero (Orat. c. 37). Cicero says that posterity will judge by comparison what his style was and what Hortensius' style; but his prediction has failed. Hortensius' writings were below his reputation (Quintil. Inst. xi. 3).

Hortensius had spoken before Cicero and in defence of Rabirius against the charge of Perduellio. He had proved that Rabirius did not kill Saturninus, and of course he proved that somebody else killed him. This makes it clear that the supposition of Niebuhr mentioned in the Introduction cannot be maintained.

esse quosdam cives imperitos, sed non multos. Numquam, mihi credite, populus Romanus hic qui silet consulem me fecisset, si vestro clamore perturbatum iri arbitraretur. Quanto jam levior est acclamatio! Quin continetis vocem, indicem stultitiae vestrae, testem paucitatis.—Libenter, inquam, confiterer, si vere possem, aut etiam, si mihi esset integrum, C. Rabirii manu L. Saturninum esse occisum, et id facinus pulcherrimum esse arbitrarer: sed quoniam id facere non possum, confitebor id quod ad laudem minus valebit, ad crimen non minus. Confiteor interficiendi Saturnini caussa C. Rabirium arma cepisse. Quid est, Labiene? quam a me graviorem confessionem aut quod in hunc majus crimen exspectas? Nisi vero interesse aliquid putas inter eum qui hominem occidit, et eum qui cum telo occidendi hominis caussa fuit. Si interfici Saturninum nefas fuit, arma sumpta esse contra Saturninum sine scelere non possunt: si arma jure sumpta concedis, inter*fectum jure concedas necesse est.*

(*In vetustissimo exemplari deest una charta.*)

VII. Fit senatusconsultum ut C. Marius L. Valerius consules adhiberent tribunos pl. et praetores quos eis videretur, operamque darent ut imperium populi Romani majestasque conservaretur. Adhibent omnes tribunos pl. praeter Saturninum, praetores praeter Glauciam: qui rem publicam salvam esse vellent, arma capere et se sequi jubent. Parent omnes. Ex aedibus sacris armamentariisque publicis arma populo Romano, C. Mario consule distribuente, dantur. Hic jam, ut omittam cetera, de te ipso, Labiene, quaero: quum Saturninus Capitolium teneret armatus, esset una C. Glaucia, C. Saufeius, etiam ille ex compedibus atque ergastulo Gracchus; addam, quoniam ita vis, eodem Q. Labienum, patruum tuum; in foro autem C. Marius et L. Valerius Flaccus consules, post cunctus senatus, atque ille senatus, quem etiam vos ipsi, qui hos patres conscriptos qui nunc sunt in invidiam vocatis, quo facilius de hoc

Quin continetis] The passage is thus quoted by Quintilian: "Quin compescitis vocem istam, indicem stultitiae, testem paucitatis" (Inst. xi. 3). 'Quin' so used marks an interrogative sentence; but it had lost its original signification of 'why not,' and the interrogation may be omitted. It is even used with an imperative, 'Quin, surgè,' 'Come, get up;' instead of 'Quin surgis?' 'Come, why don't you rise?'

interfectum, &c.] "Codd. mance: *concedis inter*; supplementum primum inveni in Manutiana a. 1541." Halm.

7. *aedibus sacris*] The reading is doubtful. Halm has 'aedificiis.'—'Gracchus:' this L. Equitius Gracchus was passed off for a son of Ti. Gracchus, though he is said to have been a slave. He was tribunus designatus for B.C. 99, when he was killed. He is again mentioned by Cicero, Pro Sestio, c. 47.

senatu detrahere possitis, laudare consuevistis; quum equester ordo—at quorum equitum, dii immortales! patrum nostrorum atque ejus aetatis, quae tum magnam partem rei publicae atque omnem dignitatem judiciorum tenebat—quum omnes omnium ordinum homines, qui in salute rei publicae salutem suam repositam esse arbitrabantur, arma cepissent; quid tandem C. Rabirio faciendum fuit? De te ipso, inquam, Labiene, quaero: quum ad arma consules ex senatusconsulto vocavissent; quum armatus M. Aemilius, princeps senatus, in comitio constitisset, qui quum ingredi vix posset, non ad insequendum sibi tarditatem pedum, sed ad fugiendum impedimento fore putabat; quum denique Q. Scaevola, confectus senectute, perditus morbo, mancus et membris omnibus captus ac debilis, hastili nixus, et animi vim et infirmitatem corporis ostenderet; quum L. Metellus, Ser. Galba, C. Serranus, P. Rutilius, C. Fimbria, Q. Catulus omnesque qui tum erant consulares pro salute communi arma cepissent; quum omnes praetores, cuncta nobilitas ac juventus accurreret, Cn. et L. Domitii, L. Crassus, Q. Mucius, C. Claudius, M. Drusus; quum omnes Octavii, Metelli, Julii, Cassii, Catones, Pompeii; quum L. Philippus, L. Scipio, quum M. Lepidus, quum D. Brutus, quum hic ipse P. Servilius, quo tu imperatore, Labiene, meruisti; quum hic Q. Catulus, admodum tum adolescens, quum hic C. Curio, quum denique omnes clarissimi viri cum consulibus essent, quid tandem C. Rabirium facere convenit? Utrum inclusum atque abditum latere in occulto, atque ignaviam suam tenebrarum ac parietum custodiis tegere, an in Capitolium pergere atque ibi se cum tuo patruo et ceteris ad mortem propter vitae turpitudinem confugientibus congregare? an cum Mario, Scauro, Catulo, Metello, Scaevola, cum bonis denique omnibus coire non modo salutis, verum etiam periculi societatem?

laudare consuevistis;] 'abest a codicibus,' Baiter. I do not know where the words came from.

patrum—aetatis,] Something is supposed to be out of order here. The Equites had the Judicia at the time of which he is speaking under the Lex Sempronia.

Q. Scaevola,] This was the Augur Q. Mucius Scaevola. The Q. Mucius, whom he afterwards mentions, was Q. Mucius Scaevola, Pontifex Maximus.—'perditus morbo' is the MSS. reading, in place of which 'praepeditus' has got into many of the editions. Graevius compares a passage in the Pro Murena: "Morbo confectus, lacrimis et moerore perditus." Valerius Maximus (iii. 2. 18) has this story.

P. Servilius,] Isauricus, who defeated the Cilicians and took Corycus, Phaselis, and Olympus. Here we learn that Labienus had served under him in Asia. Labienus was already a man of some experience when Caesar took him to Gallia (B. G. i.).

coire societatem] "To form a partnership, a combination." It is one of Cicero's expressions.

VIII. Tu denique, Labiene, quid faceres tali in re ac tempore? quum ignaviae ratio te in fugam atque in latebras impelleret, improbitas et furor L. Saturnini in Capitolium arcesseret, consules ad patriae salutem ac libertatem vocarent, quam tandem auctoritatem, quam vocem, cujus sectam sequi, cujus imperio parere potissimum velles? Patruus, inquit, meus cum Saturnino fuit. Quid, pater quicum? quid, propinqui vestri, equites Romani? quid, omnis praefectura, regio, vicinitas vestra? quid, ager Picenus universus utrum tribunicium furorem an consularem auctoritatem secutus est? Equidem hoc affirmo, quod tu nunc de tuo patruo praedicas, neminem umquam adhuc de sese esse confessum; nemo est, inquam, inventus tam profligatus, tam perditus, tam ab omni non modo honestate, sed etiam simulatione honestatis relictus, qui se in Capitolio fuisse cum Saturnino fateretur. At fuit vester patruus. Fuerit; et fuerit nulla desperatione rerum suarum, nullis domesticis vulneribus coactus; induxerit eum L. Saturnini familiaritas ut amicitiam patriae praeponeret: idcircone oportuit C. Rabirium desciscere a re publica, non comparere in illa armata multitudine bonorum, consulum voci atque imperio non obedire? Atqui videmus haec in rerum natura tria fuisse; ut aut cum Saturnino esset, aut cum bonis, aut lateret. Latere mortis erat instar turpissimae, cum Saturnino esse furoris et sceleris, virtus et honestas et pudor cum consulibus esse cogebat. Hoc tu igitur in crimen vocas, quod cum iis fuerit C. Rabirius, quos amentissimus fuisset si oppugnasset; turpissimus, si reliquisset? IX. At C. Decianus, de quo tu saepe commemoras, quia, quum hominem omnibus insignem notis turpitudinis, P. Furium, accusaret summo studio bonorum omnium, queri est ausus in contione de morte Saturnini, condemnatus est: et

8. *sectam sequi,*] A 'secta' is 'a party,' 'a faction,' 'a school,' and the like. Columella (ii. 2. 21) has "quam velut sectam legemque in proscindendis agris sequantur agricolae." The word contains the root of 'secare,' and signifies originally a part or portion.

praefectura,] We may infer from what follows that it was in Picenum. A Praefectura was properly a place which had no Res Publica of its own, no magistratus. Justice was administered by a Praefectus sent from Rome. Capua was an example. A good deal has been said about the nature of the Praefecturae. See Becker's Handbuch, &c. iii. 1. p. 24.

At fuit] *Affuit*, the MSS. It is 'at fuit' in the Aldine of 1519. The answer is 'Fuerit,' &c. "Well, let it be so; and suppose that he was not urged by the desperate state of his circumstances, by no pecuniary difficulties." The 'domestica vulnera' are loss of property, debt, importunity of creditors, and so on. Cicero reckons among the 'optimates' those who are not 'malis domesticis impediti.' Insolvency may make men revolutionists, usurpers, murderers, and assassins.

9. *C. Decianus,*] The story of C. Decianus is in Valerius Maximus (viii. 1, 2).

Sex. Titius, quod habuit imaginem L. Saturnini domi suae, condemnatus est. Statuerunt equites Romani illo judicio improbum civem esse, et non retinendum in civitate, qui hominis hostilem in modum seditiosi imagine aut mortem ejus honestaret, aut desideria imperitorum misericordia commoveret, aut suam significaret imitandae improbitatis voluntatem. Itaque mihi mirum videtur, unde hanc tu, Labiene, imaginem quam habes inveneris. Nam Sex. Titio damnato, qui istam habere auderet inventus est nemo. Quod tu si audisses, aut si per aetatem scire potuisses, numquam profecto istam imaginem, quae domi posita pestem atque exsilium Sex. Titio attulisset, in Rostra atque in contionem attulisses, nec tuas umquam rationes ad eos scopulos appulisses, ad quos Sex. Titii afflictam navem, et in quibus C. Deciani naufragium fortunarum videres. Sed in his rebus omnibus imprudentia laberis. Caussam enim suscepisti antiquiorem memoria tua: quae caussa ante mortua est quam tu natus esses; qua in caussa tute profecto fuisses, si per aetatem esse potuisses, eam caussam in judicium vocas. An non intelligis, primum quos homines et quales viros mortuos summi sceleris arguas? deinde quot ex his qui vivunt eodem crimine in summum capitis periculum arcessas? Nam si C. Rabirius fraudem capitalem admisit, quod arma contra L. Saturninum tulit; huic quidem afferet aliquam deprecationem periculi aetas illa qua tum

Sex. Titius,] I do not comprehend under what Lex the Equites could convict this man for having in his possession a bust of Saturninus. Valerius Maximus (viii. 1, 3) says that he was condemned by the Contio: "suffragiis eum tota contio oppressit." In Torrentius' edition it is 'tota cognitio,' which is not Latin or sense. It was no formal condemnation. Titius yielded to a popular cry and went away (exsilium Sex. Titio attulisset). Klotz says on this passage of Valerius: "We see that the censorship against Imagines was exercised even in the old time, and very strictly." I see nothing of this at all. Valerius says that the man was condemned 'suffragiis.' Labienus had produced the bust of Saturninus with the hope of making some impression by it, but the time was gone by, and Saturninus had done nothing worth remembering. It was a Roman fashion to produce an image, a visible object which makes more impression on most people than words or reason. Plutarch (Caesar, 6) tells of Caesar during his aedileship setting up images of Marius on the Capitol, in order to gain the Marian party.

natus esses;] 'natus es,' Halm.—'duos Mucios:' the two Scaevolae had been long dead. The Pontifex was murdered in the civil broils. L. Crassus, the orator, was dead, and M. Antonius, the great orator, was put to death by Marius' order. It seems that Antonius had the command of some troops outside the walls at the time of Saturninus' riot.

fraudem capitalem] 'Fraus' is not 'fraud,' at least in its primary meaning. Fraud is 'dolus malus.' Ulpian (Dig. 21. 1. 23. § 2) defines 'capitalis fraus:' "Capitalem fraudem admittere est tale aliquid delinquere, propter quod capite puniendus sit: veteres enim fraudem pro poena ponere solebant. Capitalem fraudem admisisse accipiemus dolo malo et per nequitiam." Hotmann has a good note on 'fraus.' He says it is used for 'dolus,' frequently by the Jurisconsulti; for 'culpa,' as in the formula, 'Ne illi fraudi sit,' that is, 'Ne illi culpa imputetur;' lastly for 'poena,' as

fuit: Q. vero Catulum, patrem hujus, in quo summa sapientia, eximia virtus, singularis humanitas fuit; M. Scaurum, illa gravitate, illo consilio, illa prudentia; duos Mucios, L. Crassum, M. Antonium, qui tum extra Urbem cum praesidio fuit; quorum in hac civitate longe maxima consilia atque ingenia fuerunt; ceteros pari dignitate praeditos, custodes gubernatoresque rei publicae, quemadmodum mortuos defendemus? Quid de illis honestissimis viris atque optimis civibus, equitibus Romanis, dicemus, qui tum una cum senatu salutem rei publicae defenderunt? quid de tribunis aerariis ceterorumque ordinum omnium hominibus, qui tum arma pro communi libertate ceperunt? X. Sed quid ego de iis omnibus qui consulari imperio paruerunt loquor? de ipsorum consulum fama quid futurum est? L. Flaccum, hominem quum semper in re publica, tum in magistratibus gerendis, in sacerdotio caerimoniisque quibus praeerat diligentissimum, nefarii sceleris ac parricidii mortuum condemnabimus? adjungemus ad hanc labem ignominiamque mortis etiam C. Marii nomen? C. Marium, quem vere patrem patriae, parentem, inquam, vestrae libertatis atque hujusce rei publicae possumus dicere, sceleris ac parricidii nefarii mortuum condemnabimus? Etenim si C. Rabirio, quod iit ad arma, crucem T. Labienus in campo Martio defigendam putavit, quod tandem excogitabitur in eum supplicium qui vocavit? Ac si fides Saturnino data est, quod abs te saepissime dicitur, non eam C. Rabirius sed C. Marius dedit, idemque violavit, si in fide non stetit. Quae fides, Labiene, qui potuit sine senatusconsulto dari? Adeone

in the formula, 'Se fraude esto,' that is, 'sine poena.' Comp. Horace, Carm. i. 19.

If Rabirius did commit a capital offence, his youth, for he was then a young man, may be urged in extenuation (deprecationem) of his offence. Youth is no legal excuse, except when a person is below a certain age, which Cicero knew. He means that a young man is morally less culpable for an act of violence than a man of mature years.

tribunis aerariis] In Cicero's time and earlier the 'tribuni aerarii' were an 'ordo.' By the Lex Aurelia (B.C. 70) the Judices were chosen from the Senate, the Equites, and the Tribuni Aerarii. The history and the political character of these Tribuni are very obscure. Marquardt (Handbuch, &c. iii. 1. p. 130) has collected many passages and various opinions about them.

10. *patrem patriae,*] This was an appellation which Cicero himself afterwards received :—

"Sed Roma parentem
Roma patrem patriae Ciceronem libera dixit."

(Juvenal, Sat. viii. 243.)

'Pater patriae' afterwards became an imperial title, and it appears on the Roman medals. Comp. Horace, Carm. i. 3. v. 50.

fides Saturnino] See the Introduction. Florus (iii. 16) says: "Quum abruptis fistulis obsideretur, Senatuique per legatos poenitentiae fidem faceret, ab arce degressus cum ducibus factionis receptus in curiam est. Ibi eum facta irruptione populus fustibus saxisque coopertum in ipsa quoque morte laceravit." Perhaps it was not certain on what terms he surrendered. Marius tried to save him, but he could not. Velleius

hospes es hujusce urbis, adeone ignarus disciplinae consuetudinisque nostrae, ut haec nescias; ut peregrinari in aliena civitate, non in tua magistratum gerere videare? Quid jam ista C. Mario, inquit, nocere possunt, quoniam sensu et vita caret? Itane vero tantis in laboribus C. Marius periculisque vixisset, si nihil longius quam vitae termini postulabant spe atque animo de se et gloria sua cogitasset? At credo, quum innumerabiles hostium copias in Italia fudisset atque obsidione rem publicam liberasset, omnia sua secum una moritura arbitrabatur. Non est ita, Quirites: neque quisquam nostrum in rei publicae periculis cum laude ac virtute versatur, quin spe posteritatis fructuque ducatur. Itaque quum multis aliis de caussis virorum bonorum mentes divinae mihi atque aeternae videntur esse, tum maxime, quod optimi et sapientissimi cujusque animus ita praesentit in posterum ut nihil nisi sempiternum spectare videatur. Quapropter equidem et C. Marii et ceterorum virorum sapientissimorum ac fortissimorum civium mentes, quae mihi videntur ex hominum vita ad deorum religionem et sanctimoniam demigrasse, testor, me pro illorum fama, gloria, memoria non secus ac pro patriis fanis atque delubris propugnandum putare: ac si pro illorum laude mihi arma capienda essent, non minus strenue caperem quam illi pro communi salute ceperunt. Etenim, Quirites,

(ii. 12) has a different story, and it is probably not the true story.

hospes es] Halm added 'es.'

peregrinari] Labienus (c. 8) seems to have come from some obscure part of Italy. He was an adventurer in Rome. But so was Cicero, and so are all the men in capital cities who are good for any thing.

spe posteritatis] "The hope and profit of a futurity." This is the proper sense of 'posteritas.' But like 'nobilitas,' it also signifies 'posteri,' those who will come after us, all of whom are comprehended under the form of a fictitious or artificial person. A 'partnership' (societas) implies a number of living persons associated for some purpose; but the living persons lose their individuality in the 'societas,' which becomes an artificial person for the purpose of the association. So 'posteri,' all the persons who come after us, lose their individuality in the term 'posterity,' which is an artificial person for the purposes of speech and thought. (See Vol. I. Index, Person Artificial).

Cicero urges this argument in several places: in the De Senectute (c.21, &c.), and De Am. (c. 4) when he was twenty years older. If Marius, he says, had supposed that himself and his glory were limited to the narrow terms of a life, he would not have lived a life of labour and danger. The thought of what will be thought of us after we are dead has some influence on some men. They wish, for some reason, not easy to explain, to leave a name behind them; but certainly not for this reason only, because they shall be sensible of human opinion when they are dead, for if we admit the existence after death, the knowledge of what men shall say and think of us is by no means involved of necessity in the notion of existence after death. Cicero makes the disposition to look forward to what shall be said and thought of us after our death as evidence, or whatever it may be called, of the immortality of the soul. But a wish or an expectation or a belief about the future is no foundation for a conclusion about the future, either positively or negatively. Sir J. Davies, in his ingenious poem on the Original, Nature, and Immor-

exiguum nobis vitae curriculum natura circumscripsit, immensum gloriae. XI. Quare si eos qui jam de vita decesserunt ornabimus, justiorem nobis mortis conditionem relinquemus. Sed si illos, Labiene, quos jam videre non possumus, negligis; ne his quidem quos vides consuli putas oportere? Neminem esse dico ex his omnibus, qui illo die Romae fuerint, quem tu diem in judicium vocas, pubesque tum fuerit, quin arma ceperit, quin consules secutus sit. Omnes ii, quorum tu ex aetate conjecturam facere potes quid tum fecerint, abs te rei capitis C. Rabirii nomine citantur.—At occidit Saturninum Rabirius.—Utinam fecisset! non supplicium depre-

tality of the Soul has the same idea as Cicero, but his argument is better than the Roman's. Section 30, Reason 5, is worth reading. Among other things he says, as Cicero does,

"From this desire that main desire proceeds,
Which all men have surviving fame to gain,
By tombs, by books, by memorable deeds,
For she that this desires doth still remain."

gloriae] The thought which the orator expresses is elevated and ennobling. Man's life is a few years; his fame, his great deeds live in the memory of the generations which follow him. His power to do good or bad is almost unlimited, if he has ability and the opportunity of displaying it. Many have not the opportunity, and they pass through life without leaving a trace behind them. But what is Cicero's 'gloria?' If his work De Gloria had been preserved, which he wrote near the end of his life, when he was disappointed, we should have known exactly what he supposed it to be and its value. 'Gloria' is the fame which a man gets by his acts, a name which lives to posterity. But it is got both by good and by evil; and the glory of many men has been the curse of the human race. It is an infirmity to seek it; a folly to give up present happiness in order to get glory; and a crime to seek it by means which bring misery on mankind. Cicero felt the passion strong, and lived long enough to know what he had lost by it. Glory, fame is only other men's opinion, a name, a breath, as the Emperor says. To live in other men's opinion is a poor existence. A man should live in his own. Every thing is only for a day, both that which remembers and that which is remembered (Antoninus i. 35). How many whose glories have been celebrated are now given up to oblivion; and how many who have celebrated them have long been clean out of men's minds (vii. 6). About glory: look at the thoughts of the men, what they were, and what kind of things they shunned, and what they pursued; and remember that as the sands are heaped one on another, and cover those which were there before, so in life former things are soon covered by those which come after (vii. 34). The Emperor has much more to the same effect; all very consolatory to the man of glory. Montaigne has an Essay on Glory, in which he is instructive as he always is. He says something of Cicero that is very useful for those who read Cicero: "I believe that if we had the books that Cicero has writ upon this subject, we should there read fine stories of it, for he was so possessed with this passion, that if he had dared, I think he would willingly have fallen into the excess that others did, that virtue itself was only to be coveted upon the account of the honour that always attends it."

11. *justiorem*] This is a singular form of expression, or rather a singular idea for which he has chosen this form of expression. If, he says, we shall maintain the honour and the character of the dead, we shall secure for ourselves fairer terms of death. When we die and are no longer able to defend our good name, we shall have it secured by having maintained in our lifetime the principle of doing justice to the dead.—'omnes ii:' 'omnes hi,' Halm. I doubt if Cicero would say 'omnes hi' here. He could say 'hi omnes.'

carer, sed praemium postularem. Etenim si Scaevae, servo Q. Crotonis, qui occidit L. Saturninum, libertas data est, quod equiti Romano praemium dari par fuisset? et si C. Marius, quod fistulas, quibus aqua suppeditabatur Jovis Optimi Maximi templis ac sedibus, praecidi imperarat, quod in clivo Capitolino improborum civium * * *

(*Fragmenta a Niebuhrio ex codice palimpsesto Vaticano edita.*)

XII. * * * aret. Itaque non senatus in ea caussa cognoscenda me agente diligentior aut inclementior fuit quam vos universi, quum orbis terrae distributionem atque illum ipsum agrum Campanum animis, manibus, vocibus repudiavistis.

Idem ego quod is qui auctor hujus judicii est clamo, praedico, denuntio: nullus est reliquus rex, nulla gens, nulla natio, quam pertimescatis: nullum adventicium, nullum extraneum malum est, quod insinuare in hanc rem publicam possit: si immortalem hanc civitatem esse vultis, si aeternum imperium, si gloriam sempiternam manere, nobis a nostris cupiditatibus, a turbulentis hominibus atque novarum rerum cupidis, ab intestinis malis, a domesticis consiliis est cavendum.

Hisce autem malis magnum praesidium vobis majores vestri

Scaevae,] "A Scaeva quodam interfectus est" (Livy, Epit. 69). Hotmann adds that it was a well-known fact that Saturninus was killed by Rabirius with the help of Scaeva. I do not know what is the evidence for this.

fistulas,] The cutting off of the pipes is mentioned by Florus (iii. 16), by Appian (B. C. i. 32), and Plutarch (Marius, c. 30). This water that supplied the Capitol must have come from a high level. The Marcia and Tepula were brought to the Capitol (Frontinus, De Aquaeduct. Romae, Lib. i.). The Marcia was brought to Rome by a course of more than sixty miles, of which above fifty-four were under ground (rivo subterraneo). 'Fistulae' were also called 'tubi.' Columella (i. 5) speaks of earthern pipes (fictiles tubi).

improborum civium] Niebuhr has ingeniously added two words to this imperfect sentence: 'caedem fecerat.' He found them in the spurious oration entitled 'Antequam iret in exilium,' a miserable piece of composition, in which, however, shreds of the master hand may be here and there detected. The passage is this: "Si C. Mario auxilio fuistis quod in clivo Capitolino improborum civium fecerat caedem."

12. ... *aret*] Niebuhr observes that though this is the shortest of Cicero's orations for a defendant, since it was limited to half an hour, yet it seems that a considerable part has been lost between the end of the part which up to this time was all that was known of this oration, and the beginning of this fragment.

caussa] The MS. has 'causa' as usual in like words. Niebuhr says that the 'causa' is the 'judicium perduellionis' which he supposes to have been annulled by the Senate; but it is impossible to say what that matter was in which Cicero says that "the Senate was not more active or less severe" than the people had been in rejecting the Agraria Lex of Rullus. 'Diligentior' is a correction of Niebuhr; the MS. has 'diligenter.'

reliquus] The MS. has RELIQUS, the writing of the oldest MSS. of Cicero. A MS. of the oration for Cluentius has 'relicus.' (Nieb.)

insinuare] Niebuhr has completed the imperfect word '.. nare' of the MS. with-

reliquerunt, vocem illam consulis, Qui rem publicam salvam esse vellent. Huic voci favete, Quirites, neque vestro judicio abstuleritis mihi rem publicam, neque eripueritis rei publicae spem libertatis, spem salutis, spem dignitatis.

Quid facerem, si T. Labienus caedem civium fecisset ut L. Saturninus, si carcerem refregisset, si Capitolium cum armatis occupavisset? Facerem id quod C. Marius fecit: ad senatum referrem, vos ad rem publicam defendundam cohortarer, armatus ipse vobiscum armato obsisterem. Nunc, quoniam armorum suspicio nulla est, tela non video, non vis, non caedes, non Capitolii atque arcis obsessio est, sed accusatio perniciosa, judicium acerbum, res tota a tribuno plebis suscepta contra rem publicam; non vos ad arma vocandos mihi esse, sed ad suffragia cohortandos contra oppugnationem vestrae majestatis putavi.

Itaque nunc vos omnes oro atque obtestor hortorque. Non ita mos est, consulem quum es * * *

XIII. * * * timet: qui hasce ore adverso pro re publica cicatrices ac notas virtutis accepit, is ne quod accipiat famae vulnus perhorrescit; quem numquam incursiones hostium loco movere potuerunt, is nunc impetum civium, cui necessario cedendum est, perhorrescit.

Neque a vobis jam bene vivendi, sed honeste moriendi facultatem petit: neque tam ut domo sua fruatur quam ne patrio sepulcro privetur laborat. Nihil aliud jam vos orat atque obsecrat, nisi uti ne se legitimo funere et domestica morte privetis; ut eum qui pro patria nullum umquam mortis periculum fugit in patria mori patiamini.

out adding 'se.' See the note, Verr. ii. 3. c. 68, on 'insinuare.'

vocem] Niebuhr compares the following passage (Caesar, B. C. i. 7): "Quotiescunque sit decretum, darent magistratus operam, ne quid R. P. detrimenti caperet: qua voce et quo S. C. populus Romanus ad arma sit vocatus."

vellent.] Halm, who observes after Wesenberg that the plural is used in this formula. Wesenberg proposes 'volunt.' Niebuhr has 'volt.'

mihi rem publicam,] Niebuhr says that there would be no doubt that *rem publicam* is the proper word to insert in the defective text of the MS., if he could prove that Cicero ever said 'rem publicam auferre.' Baiter thinks that the sense rather requires 'consulare imperium' or 'consulare jus.'

13. *vulnus perhorrescit;*] Niebuhr writes 'volnus pertimescit.' He thinks that Cicero did not repeat a word so disagreeably. But is it disagreeable, if it is properly read? I am not sure that it is. Orelli thinks that the word has been repeated by the copyist, and that the first 'perhorrescit' might be omitted. Orelli finds the same fault with Niebuhr's emendation that Niebuhr finds in the text; the occurrence of 'pertimescit' so soon after 'timet.' The Greeks and Romans were not so scrupulous about repetition as we are. I do not know if it is yet fixed how soon a word may be written again after it has been once written. Some words of necessity must often be written, or we must stop writing.

mori patiamini.] People may still differ

Dixi ad id tempus quod mihi a tr. pl. praestitutum est: a vobis peto quaesoque ut hanc meam defensionem pro amici periculo fidelem, pro rei publicae salute consularem putetis.

Servius ad Verg. Aen. i. 13: *Cicero pro Rabirio.* Et cum universo populo Romano, tum vero equestri ordini longe carissimus.

in their opinion about the purpose of this oration, whether it was to save Rabirius from death or from exile or some penalty. I conclude with the following note of Klotz: "This passage also shows, that only the external form of procedure of the old process for Perduellio could be retained, since at this time Leges protected the Roman citizen from the penalty of death; and accordingly also the grievous complaint of our orator (c. 4) about the cruel execution of the condemned was altogether superfluous, and only calculated to deceive the multitude who had to decide."

Niebuhr, in his edition of this fragment, has supplied the defects of the MS., and I have followed his text except in a few instances. Halm's text differs from Niebuhr's in a few places. All the restorations of Niebuhr are not certain, but most of them are. I have not printed in Italics the restored words and letters, as Halm has done, but the reader must remember that the incomplete text of the Palimpsest has been restored.

The title of the Second Edition of the orations is:—"M. Tullii Ciceronis orationes. Ad codices ex magna parte primum aut iterum collatos emendaverunt I. G. Baiterus et Car. Halmius. Pars Prior. Turici. 1854." See p. 136 of this Vol.

This is a very excellent edition. The various readings are given much more completely than in Orelli's edition; and the text is improved in many parts. The editors have prefixed their names to the orations which they have respectively edited. The Verrinae are edited by C. A. Jordan. It is possible that I may in the notes have sometimes written Halm for Baiter, or Baiter for Halm; but I have stated in the Introductions the name of the editor of each oration, whose text I have used or compared with this.

INDEX TO THE NOTES.

THE REFERENCES ARE MADE TO THE PAGES.

NOTE.—If there is any error in an Index made like this, it is an error of a unit too much or too little; but generally a unit too little.

END OF VOL. II.

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